COMPENDIUM OF CASE LAWS ON

EVOLUTION OF BAIL JURISPRUDNCE



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Jurisprudence

Of

Bail

This extract is taken from *State of Rajasthan v. Balchand*, (1977) 4 SCC 308 : 1977 SCC (Cri) 594 : 1977 SCC OnLine SC 261 at page 308

2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station at Baren once every fortnight.

This extract is taken from *Gudikanti Narasimhulu v. Public Prosecutor* [(1978) 1 SCC 240 1978 SCC (Cri) 115]

V.R. Krishna Iyer, J., sitting as Chamber Judge, enunciated the principles of bail thus: (SCC pp. 242-46, paras 3, 5-9 & 13)

"*3.* What, then, is 'judicial discretion' in this bail context? In the elegant words of Benjamin Cardozo:

> The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodised by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life'. Wide enough in all conscience is the field of discretion that remains.

Even so it is useful to notice the tart terms of Lord Camden that:

> the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature is liable....

5. ... Perhaps, this is an overly simplistic statement and we must remember the constitutional focus in Articles 21 and 19 before following diffuse observations and practices in the English system. Even in England there is a growing awareness that the working of the bail system requires a second look from the point of view of correct legal criteria and sound principles, as has been pointed out by Dr. Bottomley.

6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment. In this perspective, relevance of considerations is regulated by their nexus with the likely absence of the applicant for fear of a severe sentence, if such be plausible in the case. As Erle, J. indicated, when the crime charged (of which a conviction has been sustained) is of the highest magnitude and the punishment of it assigned by law is of extreme severity, the Court may reasonably presume, some evidence warranting, that no amount of bail would secure the presence of the convict at the stage of judgment, should he be enlarged. Lord Campbell, C.J. concurred in this approach in that case and Coleridge, J. set down the order of priorities as follows:

> I do not think that an accused party is detained in custody because of his guilt, but because there are sufficient probable grounds for the charge against him as to make it proper that he should be tried, and because the detention is necessary to ensure his appearance at trial.... It is a very important element in considering whether the party, if admitted to bail, would appear to take his trial; and I think that in coming to a determination on that point three elements will generally be found the most important: the charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable if convicted.

In the present case, the charge is that of wilful murder; the evidence contains an admission by the prisoners of the truth of the charge, and the punishment of the offence is, by law, death.

7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the court to be freed for the time being.

9. Thus the legal principles and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record—particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

13. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having

enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding—if that be so—of innocence has been recorded by one court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal."

This extract is taken from *Moti Ram v. State of M.P.*, (1978) 4 SCC 47 : 1978 SCC (Cri) 485 : 1978 SCC OnLine SC 201 at page 50

6. There is no definition of bail in the Code although offences are classified as bailable and non-bailable. The actual sections which deal with bail, as we will presently show, are of blurred semantics. We have to interdict judicial arbitrariness deprivatory of liberty and ensure 'fair procedure' which has a creative connotation after *Maneka Gandhi* [(1978) 1 SCC 248].

7. Before we turn to the provisions of the Code and dwell on the text of the sections we may as well remember what Justice Frankfurter said: "there is no surer way to misread a document than to read it literally [*Massachusetts B. & Insurance Co.* v. *US*, 352 US 128, 138] ".

8. Speaking generally, we agree with the annotation of the expression "bail" given in the *American Jurisprudence* (2nd Edn. Vol. 8, Article 2, p. 783):

> "The term 'bail bond' and 'recognizance' are used interchangeably in many bail statutes, and quite generally without distinction by the courts, and are given a practically identical effect."

According to the American Jurisprudence Article 6, p. 785, there is power in the court to release the defendant without bail or on his own recognizance. Likewise, the definition of bail as given in *Webster's Third New International Dictionary*: "The process by which a person is released from custody."

9. The concept of bail has a long history briefly set out in the publication on '*Programme in Criminal Justice Reform*':

> "The concept of bail has a long history and deep roots in English and American law. In medieval England, the custom grew out of the need to free

untried prisoners from disease-ridden jails while they were waiting for the delayed trials conducted by travelling justices. Prisoners were bailed, or delivered, to reputable third parties of their own choosing who accepted responsibility for assuring their appearance at trial. If the accused did not appear, his bailor would stand trial in his place.

Eventually it became the practice for property owners who accepted responsibility for accused persons to forfeit money when their charges failed to appear for trial. From this grew the modern practice of posting a money bond through a commercial bondsman who receives a cash premium for his service, and usually demands some collateral as well. In the event of non-appearance the bond is forfeited, after a grace period of a number of days during which the bondsman may produce the accused in court. [Vera Institute of Justice Ten-year Report 1961-71, p.20] ”

10. It sounds like a culture of bonded labour, and yet are we to cling to it! Of course, in the United States, since then, the bondsman emerged as a commercial adjunct to the processes of criminal justice, which, in turn, bred abuses and led to reform movements like the **Manhattan Bail Project. This research project spurred the National Bail Conference, held in 1964**, which in its crucial chain reaction provided the major impetus to a reform of bail law across the United States. The seminal statutory outcome of this trend was the enactment of the **Bail Reform Act of 1966** signed into law by President Lyndon B. Johnson. It is noteworthy that Chief Justice Earl Warren, Attorney-General Robert Kennedy and other legal luminaries shared the view that bail reform was necessary. Indeed, this legislative scenario has a lesson for India where a much later Criminal Procedure Code, 1973 has largely left untouched ancient provisions on this subject, incongruous with the Preamble to the Constitution.

12. The American Act of 1966 has stipulated, inter alia, **that release should be granted in non-capital cases** where there is reasonable assurance the individual will reappear when required; that the Courts should make use of a variety of release options depending on the circumstances; that information should be developed about the individual on which intelligent selection of alternatives should be based.

13. The Manhattan Bail Project, conducted by the Vera Foundation and the Institute of Judicial Administration at New York University School of Law, found that about sixty-five per cent of all felony defendants interviewed could be recommended for release *without bail*. Of 2,195 defendants released in this way *less than one per cent failed to appear*, when required. In short, risk of financial loss is an insubstantial deterrent to flight for a large number of defendants whose ties with the community are sufficient to bring them to court.

14. The consequences of pre-trial detention are grave. Defendants presumed innocent arc subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.

15. It is interesting that American criminological thinking and research had legislative response and the Bail Reforms Act, 1966 came into being. The then President, Lyndon B. Johnson made certain observations at the signing ceremony:

"Today, we join to recognize a major development in our system of criminal justice: the reform of the bail system.

This system has endured — archaic, unjust and virtually unexamined — since the Judiciary Act of 1789.

The principal purpose of bail is to insure that an accused person will return for trial if he is released after arrest.

How is that purpose met under the present system? *The defendant with means can afford to pay bail*. He can afford to buy his freedom. But the *poorer defendant cannot pay the price*. He languishes in jail weeks, months and perhaps even years before trial.

He does not stay in jail because he is guilty.

He does not stay in jail because any sentence has been passed.
He does not stay in jail because he is any more likely to flee before trial.
He stays in jail for one reason only—because he is poor...."
(emphasis added)

16. Coming to studies made in India by knowledgeable Committees we find the same connotation of bail as including release on one's own bond being treated as implicit in the provisions of the Code of Criminal Procedure. The Gujarat Committee [Report of the Legal Aid Committee appointed by the Government of Gujarat, 1971 and headed by then Chief Justice of the State, Mr Justice P.N. Bhagwati, p. 185] from which we quote extensively, dealt with this matter in depth:

"The bail system, as we see it administered in the criminal courts today, is extremely unsatisfactory and needs drastic change. In the first place it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms and even its basic premise that risk of financial loss is necessary to prevent the accused from fleeing is of doubtful validity. There are several considerations which deter an accused from running away from justice and risk of financial loss is only one of them and that too not a major one. The experience of enlightened Bail Projects in the United States such as Manhattan Bail Project and D.C. Bail Project shows that even without monetary bail it has been possible to secure the presence of the accused at the trial in quite a large number of cases. Moreover, *the bail system causes discrimination against the poor* since the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise similarly situate would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail fixed by the Magistrate is not high, for *a large majority of those who are brought before the Courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount.*" *(emphasis added)*

17. The vice of the system is brought out in the Report:

"The evil of the bail system is that either the poor accused has to fall back on touts and professional sureties for providing bail or suffer pre-trial detention. Both these consequences are fraught with great hardship to the poor. In one case the poor accused is fleeced of his moneys by touts and professional sureties and sometimes has even to incur debts to make payment to them for securing his release; in the other he is deprived of his liberty without trial and conviction and this leads to grave consequences, namely: (1) though presumed innocent he is subjected to the psychological and physical deprivations of jail life; (2) he loses his job, if he has one, and

is deprived of an opportunity to work to support himself and his family with the result that burden of his detention falls heavily on the innocent members of the family, (3) he is prevented from contributing to the preparation of his defence; and (4) the public exchequer has to bear the cost of maintaining him in the jail. [Report of the Legal Aid Committee appointed by the Government of Gujarat, 1971 and headed by then Chief Justice of the State, Mr Justice P.N. Bhagwati, p. 185] "

19A. Again:

"We should suggest that **the Magistrate must always bear in mind that *monetary bail is not a necessary element of the criminal process* and even if risk of monetary loss is a deterrent against fleeing from justice, it is not only deterrent and there are other factors which are sufficient deterrents against flight.** The *Magistrate must abandon the antiquated concept under which pre-trial release could be ordered only against monetary bail.* That concept is out-dated and *experience has shown that it has done more harm than good.* The new insight into the subject of pre-trial release which has now been developed in socially advanced countries and particularly the United States should now inform the decisions of the Magistrates in regard to pre-trial release. Every other feasible method of pre-trial release should be exhausted before resorting to monetary bail. The practice which is now being followed in the United States is that the accused should ordinarily be released on order to appear or on his own recognizance unless it is shown that there is substantial risk of non-appearance or there are circumstances justifying imposition of conditions on release. . . *If a Magistrate is satisfied* after making an enquiry into the condition and background of the accused *that the accused has his roots in the community and is not likely to abscond, he can safely release the*

accused on order to appear or on his own recognizance [Supra Note 4, p. 185] . . .”

(emphasis added)

Landmark Cases On Regular Bail

This extract is taken from *Gurcharan Singh v. State (Delhi Admn.)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41 : 1977 SCC OnLine SC 325 at page 122

9. It is in the above background that the Delhi Administration moved the High Court for cancellation of the bail granted by the Sessions Judge alleging that there was grave apprehension of the witnesses being tampered with by the accused persons on account of their position and influence which they wielded over the witnesses. The learned Sessions Judge adverting to this aspect had, while granting bail, observed as follows:

> "The argument of the learned Public Prosecutor that if released on bail, the petitioners will misuse their freedom to tamper with the witnesses is not quite convincing. After all, there is little to gain by tampering with the witnesses who have, themselves, already tampered with their evidence by making contradictory statements in respect of the same transaction."

12. Section 437 of the new Code corresponds to Section 497 of the Code of Criminal Procedure, 1898 (briefly the old Code) and Section 439 of the new Code corresponds to Section 498 of the old Code. Since there is no direct authority of this Court with regard to Section 439 CrPC of the new Code, Counsel for both sides drew our attention to various decisions of the High Courts under Section 498 CrPC of the old Code.

19. Section 437 CrPC deals, inter alia with two stages during the initial period of the investigation of a non-bailable offence. Even the officer-in-charge of the police station may, by recording his reasons in writing, release a person accused of or suspected of the commission of any non-bailable offence provided there are no reasonable grounds for believing that the accused has committed a non-bailable offence. Quick arrests by the police may be necessary when there are sufficient materials for the accusation or even for suspicion. When

such an accused is produced before the Court, the Court has a discretion to grant bail in all non-bailable cases except those punishable with death or imprisonment for life if there appear to be reasons to believe that he has been guilty of such offences. The Courts oversee the action of the police and exercise judicial discretion in granting bail always bearing in mind that the liberty of an individual is not unnecessarily and unduly abridged and at the same time the cause of justice does not suffer. After the Court releases a person on bail under sub-section (1) or sub-section (2) of Section 437 CrPC it may direct him to be arrested again when it considers necessary so to do. This will be also in exercise of its judicial discretion on valid grounds.

20. Under the first proviso to Section 167(2) no Magistrate shall authorise the detention of an accused in custody under that section for a total period exceeding 60 days on the expiry of which the accused shall be released on bail if he is prepared to furnish the same. This type of release under the proviso shall be deemed to be a release under the provisions of Chapter XXXIII relating to bail. This proviso is an innovation in the new Code and is intended to speed up investigation by the police so that a person does not have to languish unnecessarily in prison facing a trial. There is a similar provision under sub-section (6) of Section 437 CrPC which corresponds to Section 497(3-A) of the old Code. This provision is again intended to speed up trial without unnecessarily detaining a person as an undertrial prisoner, unless for reasons to be recorded in writing, the Magistrate otherwise directs. We may also notice in this connection sub-section (7) of Section 437 which provides that if at any time after the conclusion of a trial of any person accused of non-bailable offence and before the judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of such an offence, it shall release the accused, if he is in custody, on the execution of him of a bond without sureties for his appearance to hear the judgment. The principle underlying Section 437 is, therefore, towards granting of bail except

in cases where there appear to be reasonable grounds for believing that the accused has been guilty of an offence punishable with death or imprisonment for life and also when there are other valid reasons to justify the refusal of bail.

21. Section 437 CrPC is concerned only with the Court of Magistrate. It expressly excludes the High Court and the Court of Session. The language of Section 437(1) may be contrasted with Section 437(7) to which we have already made a reference. While under sub-section (1) of Section 437 CrPC the words are: "If there appear to be reasonable grounds for believing that he has been guilty", sub-section (7) says: "that there are reasonable grounds for believing that the accused is not guilty of such an offence". This difference in language occurs on account of the stage at which the two sub-sections operate. During the initial investigation of a case in order to confine a person in detention, there should only appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. Whereas after submission of charge-sheet or during trial for such an offence the Court has an opportunity to form somewhat clear opinion as to whether there are reasonable grounds for believing that the accused is not guilty of such an offence. At that stage the degree of certainty of opinion in that behalf is more after the trial is over and judgment is deferred than at a pre-trial stage even after the charge-sheet. There is a noticeable trend in the above provisions of law that even in case of such non-bailable offences a person need not be detained in custody for any period more than it is absolutely necessary, if there are no reasonable grounds for believing that he is guilty of such an offence. There will be, however, certain overriding considerations to which we shall refer hereafter. Whenever a person is arrested by the police for such an offence, there should be materials produced before the Court to come to a conclusion as to the nature of the case he is involved in or he is suspected of. If at that stage from the materials available there appear reasonable grounds for believing that the person has been guilty of an offence punishable with death or imprisonment

for life, the Court has no other option than to commit him to custody. At that stage, the Court is concerned with the existence of the materials against the accused and not as to whether those materials are credible or not on the merits.

22. In other non-bailable cases the Court will exercise its judicial discretion in favour of granting bail subject to sub-section (3) of Section 437 CrPC if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437(1) CrPC and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence.

23. By an amendment in 1955 in Section 497 CrPC of the old Code the words "or suspected of the commission of" were for the first time introduced. These words were continued in the new Code in Section 437(1) CrPC. It is difficult to conceive how if a police officer arrests a person on a reasonable suspicion of commission of an offence punishable with death or imprisonment for life (Section 41 CrPC of the new Code) and forwards him to a Magistrate [Section 167(1) CrPC of the new Code] the Magistrate at that stage will have reasons to hold that there are no reasonable grounds for believing that he has not been guilty of such an offence. At that stage unless the Magistrate is able to

act under the proviso to Section 437(1) CrPC bail appears to be out of the question. The only limited inquiry may then relate to the materials for the suspicion. The position will naturally change as investigation progresses and more facts and circumstances come to light.

24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), CrPC against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.

26. In the present case the Sessions Judge having admitted the appellants to bail by recording his reasons we will have to see whether that order was vitiated by any serious infirmity for which it was right and proper for the High

Court, in the interest of justice, to interfere with his discretion in granting the bail.

27. Ordinarily the High Court will not exercise its discretion to interfere with an order of bail granted by the Sessions Judge in favour of an accused.

28. We have set out above the material portions of the order of the Sessions Judge from which it is seen that he did not take into proper account the grave apprehension of the prosecution that there was a likelihood of the appellants tampering with the prosecution witnesses. In the peculiar nature of the case revealed from the allegations and the position of the appellants in relation to the eyewitnesses it was incumbent upon the Sessions Judge to give proper weight to the serious apprehension of the prosecution with regard to tampering with the eyewitnesses, which was urged before him in resisting the application for bail. The matter would have been different if there was absolutely no basis for the apprehension of the prosecution with regard to tampering of the witnesses and the allegation rested only on a bald statement. The manner in which the above plea was disposed of by the Sessions Judge was very casual and even the language in the order is not clear enough to indicate what he meant by observing that "the witnesses . . . themselves already tampered with their evidence by making contradictory statements . . .". The learned Sessions Judge was not alive to the legal position that there was no substantive evidence yet recorded against the accused until the eyewitnesses were examined in the trial which was to proceed unimpeded by any vicious probability. The witnesses stated on oath under Section 164 CrPC that they had made the earlier statements due to pressurisation by some of the appellants. Where the truth lies will be determined at the trial. The High Court took note of this serious infirmity of approach of the Sessions Judge as also the unwarranted manner bordering on his prematurely commenting on the merits of the case by observing that "such deposition cannot escape a taint of unreliability in some

measure or other". The only question which the Sessions Judge was required to consider at that stage was whether there was prima facie case made out, as alleged, on the statements of the witnesses and on other materials. There appeared at least nothing at that stage against the statement of ASI Gopal Das who had made no earlier contradictory statement. "The taint of unreliability" could not be attached to his statement even for the reason given by the learned Sessions Judge. Whether his evidence will ultimately be held to be trustworthy will be an issue at the stage of trial. In considering the question of bail of an accused in a non-bailable offence punishable with death or imprisonment for life, it is necessary for the Court to consider whether the evidence discloses a prima facie case to warrant his detention in jail besides the other relevant factors referred to above. As a link in the chain of criminal conspiracy the prosecution is also relying on the conduct of some of the appellants in taking Sunder out of police lockup for making what is called a false discovery and it is but fair that the Panch witness in that behalf be not allowed to be got at.

This extract is taken from *Prahlad Singh Bhati v. NCT, Delhi*, (2001) 4 SCC 280 : 2001 SCC (Cri) 674 : 2001 SCC OnLine SC 575 at page 284

6. Even though there is no legal bar for a Magistrate to consider an application for grant of bail to a person who is arrested for an offence exclusively triable by a Court of Session yet it would be proper and appropriate that in such a case the Magistrate directs the accused person to approach the Court of Session for the purposes of getting the relief of bail. Even in a case where any Magistrate opts to make an adventure of exercising the powers under Section 437 of the Code in respect of a person who is suspected of the commission of such an offence, arrested and detained in that connection, such Magistrate has to specifically negate the existence of reasonable ground for believing that such an accused is guilty of an offence punishable with the sentence of death or imprisonment for life. In a case where the Magistrate has no occasion and in fact does not find, that there were no reasonable grounds to believe that the accused had not committed the offence punishable with death or imprisonment for life, he shall be deemed to be having no jurisdiction to enlarge the accused on bail.

7. Powers of the Magistrate, while dealing with the applications for grant of bail, are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Session, the Magistrate has no jurisdiction to grant bail unless the matter is covered by the provisos attached to Section 437 of the Code. The limitations circumscribing the jurisdiction of the Magistrate are evident and apparent. Assumption of jurisdiction to entertain the application is distinguishable from the exercise of the jurisdiction.

8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (*sic* itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

9. In the instant case while exercising the jurisdiction, apparently under Section 437 of the Code, the Metropolitan Magistrate appears to have completely ignored the basic principles governing the grant of bail. The Magistrate referred to certain facts and the provisions of law which were not, in any way, relevant for the purposes of deciding the application for bail in a case where the accused was charged with an offence punishable with death or imprisonment for life. The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. Neither Section 437(5) nor Section 439(1) of the Code was attracted. There was no question of cancellation of bail earlier granted to the accused for an offence punishable under Sections 498-A, 306 and 406 IPC. The Magistrate committed an irregularity by holding that "I do not agree with the submission made by the

learned Prosecutor inasmuch as if we go by his submissions then the accused would be liable for arrest every time the charge is altered or enhanced at any stage, which is certainly not in the spirit of law". With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Instead of referring to the grounds which entitled the respondent-accused the grant of bail, the Magistrate adopted a wrong approach to confer on him the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail.

This extract is taken from *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 : 2002 SCC (Cri) 688 : 2002 SCC OnLine SC 351 at page 601

2. While liberty of an individual is precious and there should always be an all-round effort on the part of law courts to protect such liberties of individuals — but this protection can be made available to the deserving ones only since the term protection cannot by itself be termed to be absolute in any and every situation but stands qualified depending upon the exigencies of the situation. It is on this perspective, that in the event of there being committal of a heinous crime, it is the society that needs protection from these elements since the latter are having the capability of spreading a reign of terror so as to disrupt the life and the tranquillity of the people in the society. The protection thus is to be allowed upon proper circumspection depending upon the fact situation of the matter. It is in this context the observations of this Court in *Shahzad Hasan Khan* v. *Ishtiaq Hasan Khan* [(1987) 2 SCC 684 : 1987 SCC (Cri) 415] seem to be rather apposite. This Court observed in *Shahzad Hasan Khan* [(1987) 2 SCC 684 : 1987 SCC (Cri) 415] as below : (SCC pp. 690-91, para 6)

> **"Had the learned Judge granted time to the complainant for filing counter-affidavit, correct facts would have been placed before the court and it could have been pointed out that apart from the inherent danger of tampering with or intimidating witnesses and aborting the case, there was also the danger to the life of the main witnesses or to the life of the accused being endangered as experience of life has shown to the members of the profession and the judiciary, and in that event, the learned Judge would have been in a better position to ascertain facts to act judiciously**. No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like

murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the court. Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case."

3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(*a*) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation

entails a conviction and the nature of evidence in support of the accusations.

(*b*) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(*c*) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(*d*) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

9. Undoubtedly, **considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other,** but in the event of non-consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago. The subsequent FIR is on record and incorporated therein are the charges under Sections 323 and 504 IPC in which the charge-sheet have already been issued — the court ought to take note of the facts on record rather than ignoring them. In any event, the discretion to be used shall always have to be strictly in accordance with law and not dehors the same. The High Court thought it fit not to record any reason, far less any cogent reason, as to why there should be a departure when in fact such a petition was dismissed earlier not very long ago. The consideration of the period of one year spent in jail cannot in our view be a relevant consideration in the matter of grant of bail, more so by reason of

the fact that the offence charged is that of murder under Section 302 IPC having the punishment of death or life imprisonment — it is a heinous crime against the society and as such the court ought to be rather circumspect and cautious in its approach in a matter which stands out to be a social crime of a very serious nature.

This extract is taken from *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977 : 2004 SCC OnLine SC 315 at page 532

6. Mr R.F. Nariman, learned Senior Counsel appearing for the appellant contended that the crime committed by the appellant is so heinous and gruesome that that by itself should have been sufficient to reject the bail application of the first respondent. He pointed out from the record that the first respondent had filed an application for bail before the High Court which came to be rejected by the High Court as per its order dated 16-9-1999. An SLP filed against the said order of rejection of bail came to be dismissed by this Court on 7-10-1999. A second application for bail filed by him was also rejected by the High Court on 22-11-1999. An SLP filed against the said order was rejected by this Court on 4-2-2000 [*Rajesh Ranjan* v. *State of Bihar*, (2000) 9 SCC 222] . A third application filed by the first respondent for grant of bail before the High Court was rejected by the said Court on 3-5-2000 which order became final because no SLP was filed before this Court. A fourth application for grant of bail was made on 26-7-2000 which also came to be rejected, against which no SLP was filed before this Court. The fifth application filed by the first respondent for grant of bail before the High Court came to be allowed vide order dated 6-9-2000 but in an appeal filed against the grant of said bail, this Court was pleased to allow the said appeal and cancel the bail granted to the respondent as per its order dated 25-7-2001 [*Union of India* v. *Rajesh Ranjan*, see cited order at (2004) 7 SCC 539] . Thereafter, the respondent filed a sixth application for grant of bail which was rejected by the High Court on 5-11-2001. Against the said rejection order, the respondent preferred an SLP to this Court which came to be rejected on 7-12-2001. The seventh application was filed by the respondent before the High Court for grant of bail which came to be dismissed on 13-3-2002 and an SLP filed against the said order came to be dismissed on 10-5-2002. The learned counsel submitted in this background

that the eighth attempt by the respondent became successful and the High Court by its order dated 23-5-2003 granted bail to the first respondent which is the subject-matter of this appeal. The learned counsel then submitted that though this Court in the earlier order of cancellation of bail had specifically negatived the ground on which bail was granted by the High Court, still in this round, the High Court by the impugned order again granted bail on the very same grounds which the learned counsel submits amounts to ignoring the findings of this Court. He also pointed out from the judgment of this Court that while cancelling the bail this Court had decided certain questions of law which were binding on the High Court. Still the High Court regardless of the said findings of this Court proceeded to make the impugned order without even referring to the same. For example, he pointed out that this Court in the said order had held that there was non-application of mind by the High Court to the provision of Section 437(1)(*i*) CrPC which this Court had held is a sine qua non for granting bail. He also pointed out that this Court had also held in the said judgment that there is a prohibition in Section 437(1)(*i*) that the class of persons mentioned therein shall not be released on bail if there appears to be a reasonable ground for believing that such person is guilty of an offence punishable with death or imprisonment for life. He submitted that this Court had held that the said condition is also applicable to the courts entertaining a bail application under Section 439 of the Code. He argued, assuming that the said enunciation of law is erroneous, still because it is a finding given in the case of the first respondent himself, so far as his case is concerned, it is a binding precedent unless reversed by the Apex Court itself in a manner known to law. He submitted that the High Court has not followed the said mandate in the impugned order, therefore, on that ground also the impugned order is liable to be set aside. Shri Nariman further submitted that this Court in the said order dated 25-7-2001 [*Rajesh Ranjan* v. *State of Bihar*, (2000) 9 SCC 222] has held that the fact that an accused was in custody for a certain period of time by itself is not a ground to grant bail in matters where the accused is involved in

heinous crimes. Learned counsel also pointed out that the first respondent has misused his liberty by interfering with the administration of justice.

11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(*a*) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(*b*) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(*c*) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay* v. *Sudarshan Singh* [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and *Puran* v. *Rambilas* [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)

12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the

subsequent application for bail should be granted. (See *Ram Govind Upadhyay* [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .)

16. We notice from the impugned order that the High Court has not adverted to the complaint of the investigating agency as to the threat administered by the respondent to the witnesses as also to the fact of a number of witnesses having turned hostile after the respondent was enlarged on bail which are very relevant circumstances to be borne in mind while granting bail. Of course, the learned counsel for the respondent has pointed out that even when the respondent was in custody, some other witnesses had turned hostile. **But the question for our consideration is whether the High Court was justified in not taking into consideration these facts while deciding to grant bail in a case where this Court has earlier come to the conclusion that grant of bail on the ground of period of incarceration by itself was not proper.**

This extract is taken from *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977 : 2004 SCC OnLine SC 315 at page 537

18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in the case *Puran* v. *Rambilas* [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] : (SCC p. 344, para 8)

> **"Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. ... That did not mean that whilst granting bail some**

reasons for prima facie concluding why bail was being granted did not have to be indicated."

We respectfully agree with the above dictum of this Court. We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the Court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent.

20. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at least on four occasions order refusing bail has been affirmed by this Court and subsequently when the High Court did grant bail, this Court by its order dated 26-7-2000 cancelled the said bail by a reasoned order. From the impugned order, we do not notice any indication of the fact that the High Court took note of the grounds which persuaded this Court to cancel the bail. Such approach of the High Court, in our opinion, is violative of the principle of binding nature of judgments of the superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render ineffective the principles enunciated therein which have a binding character.

This extract is taken from *State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2) : 2005 SCC OnLine SC 1383 at page 26

9. Amarmani made a second bail application under Section 439 CrPC in Crl. Misc. Case No. 1402(B) of 2004. The High Court by an order dated 29-4-2004 granted bail to Amarmani on the following reasoning:

(*a*) The entire theory of Amarmani being part of the conspiracy to murder Madhumita **was based on the confessional statement of the co-accused** Rohit Chaturvedi (recorded on 17-11-2003 by Vikas Dhul, Metropolitan Magistrate, at New Delhi). Rohit had made his confession conditional of being treated as an approver. Rohit had subsequently retracted from the confession. The admissibility of the confession against a co-accused is doubtful.

(*b*) Normally, the courts should first examine the material, other than the confessional statement of a co-accused, to find out if there is any evidence of conspiracy/abetment. The confessional statement of a co-accused should be considered only as a supporting piece of evidence, and not as substantive evidence against an accused. The confessional statement of a co-accused, more so, one that has been retracted, cannot be made the foundation for establishing the guilt of an accused. In this case, if the said confessional statement of Rohit is excluded, there is no evidence, direct or otherwise to show that Amarmani was in any manner, party to the conspiracy to kill Madhumita.

(*c*) The other materials relied on by the prosecution against Amarmani are : (*i*) illicit relationship between Amarmani and the deceased, (*ii*) the DNA test report showing that Amarmani was the father of the foetus in the womb of the deceased, (*iii*) pressure applied by Amarmani on the deceased to abort the pregnancy, (*iv*) undated letter of the deceased addressed to Amarmani finding fault with him for ignoring her. These were yet to be tested in the trial. More importantly it cannot be said that the only inference that can be

drawn from the said material is that Amarmani was a party to the conspiracy to murder the deceased. These materials can only lead to an inference that the conduct of Amarmani was immoral and that there was an effort on his part to cover up such conduct and nothing more.

(*d*) The criminal history of the accused Amarmani (twenty criminal cases ending in acquittal and four cases pending including a case of kidnapping) cannot be a ground to refuse bail.

(*e*) The contention of CBI that the investigation was still in progress in pursuance of the permission for further investigation granted by the High Court by order dated 8-4-2004 under Section 173(8) CrPC was not tenable as such further investigation was only in regard to Madhumani and not in regard to Amarmani. Charge-sheet had already been submitted. Madhumani was in jail and shall remain available for interrogation, if any, by CBI.

(*f*) Amarmani was in jail since September 2003. The investigation was already concluded. There was no chance of Amarmani either fleeing, or tampering with the witnesses. There was nothing to connect the disappearance of the domestic servants of Amarmani, with him, whom CBI wanted to interrogate. If it was found at any stage that he was not cooperating in the trial of the case or found to be tutoring/manoeuvring any witness, CBI can move an application for cancellation of bail at that stage.

16. Reliance is next placed on *Dolat Ram* v. *State of Haryana* [(1995) 1 SCC 349 : 1995 SCC (Cri) 237] wherein the distinction between the factors relevant for rejecting bail in a non-bailable case and cancellation of bail already granted, was brought out : (SCC pp. 350-51, para 4)

"*4.* **Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis.** Very cogent and overwhelming circumstances are

necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are : interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

18. It is well settled that the matters to be considered in 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 charge; (*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 tampered with*; and (*viii*) *danger, of course, of justice being thwarted by grant of bail* [see *Prahlad Singh Bhati* v. *NCT, Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and *Gurcharan Singh* v. *State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated

in *Kalyan Chandra Sarkar* v. *Rajesh Ranjan* [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 535-36, para 11)

"*11*. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(*a*) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(*b*) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(*c*) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay* v. *Sudarshan Singh* [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and *Puran* v. *Rambilas* [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)"

19. This Court also in specific terms held that : (SCC pp. 536-37, para 14)

"[T]he condition laid down under Section 437(1)(*i*) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life

imprisonment or even death penalty. In such cases, in our opinion, **the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."**

22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary. An examination of the material in this case, set out above, keeping in view the aforesaid principles, disclose prima facie, the existence of a conspiracy to which Amarmani and Madhumani were parties. The contentions of the respondents that the confessional statement of Rohit Chaturvedi is inadmissible in evidence and that that should be excluded from consideration, for the purpose of bail is untenable. This Court had negatived a somewhat similar contention in *Kalyan Chandra Sarkar* [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] thus : (SCC p. 538, para 19)

"*19*. The next argument of learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish

even a prima facie case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial."

23. But what is more relevant in this case is the conduct of Amarmani from the day of the murder in trying to interfere, detract and mislead the investigation and to threaten and coerce witnesses. We may refer to the following circumstances disclosed by the statements recorded under Section 161 CrPC:

(*i*) Nidhi Shukla and Shanti Kumari Shukla (sister and mother of the deceased respectively) have stated that on 10-5-2003 Amarmani met them near the mortuary and informed them that he will handle the entire situation and instructed them with threats, to be careful while making any statement and not to link him or his wife in regard to the murder. This was repeated during the second week of May 2003, by summoning the mother of the deceased to his house.

(*ii*) The statement of Mr Anil Aggarwal, SSP, Lucknow shows that on the intervening night of 9-5-2003 and 10-5-2003 (at about 1.00 a.m.), Amarmani called him on his mobile phone and made enquiries about the murder and informed him that he or his wife had nothing to do with the murder and that his wife was a very simple housewife and that he (Anil Aggarwal) should help him.

(*iii*) When Anil Aggarwal learnt that there was a six-month-old foetus in the womb of the deceased and that without removing the foetus, the body had been handed over to the relatives of the deceased, he immediately

instructed that the body should be brought back and the doctor should remove the foetus and preserve it for purposes of investigation. In pursuance of it, action was taken to stop the vehicle in which the body was being taken to the native place. Amarmani again called the SSP (Anil Aggarwal) on the mobile phone and told him that he knew Madhumita and that she was a simple girl. That there was some mistake in the report that Madhumita was pregnant and that the body of Madhumita had already started decomposing and the family should be permitted to proceed to their village immediately with the body so that the funeral could be performed before sunset.

(*iv*) That on 15-5-2003 Amarmani again contacted Anil Aggarwal, SSP on his mobile phone and informed him that from his own sources and investigation he had found out that Madhumita was married to one Anuj Mishra, a student of IIT Kanpur, and that he had located the priest who had performed the marriage in November/December 2002. He also stated that if the marriage could be proved the aspersion cast on his character can be removed by showing that the deceased was pregnant on account of her marriage with Anuj Mishra. He instructed the SSP to send Yagya Narain Dixit, SO, Manek Nagar to him, so that he would tell him what is to be done to prove such marriage.

(*v*) On the same day around 10 p.m. Amarmani again called Anil Aggarwal, SSP urging him to depute Yagya Narain Dixit, SO, Manek Nagar (*who was apparently close to him and was arrayed as the 6th accused being charged under Section 201 IPC. He later on died in an accident*) to verify the marriage with Anuj Mishra. Amarmani again called Anil Aggarwal on the morning of 16-5-2003 at around 10 a.m. on the mobile and reiterated the demand. Again on the evening of 16-5-2005 he called the SSP on his mobile to enquire about the progress and sounded very anxious and stated that the matter was getting delayed. When the SSP asked Amarmani to send the person who had given the information about the marriage of Madhumita

with Anuj Mishra to his office so that he could send some police officer to Kanpur to verify the matter and also informed Amarmani that he (the SSP) will decide who should be deputed to verify the matter, the very next day (17-5-2003) the SSP was transferred at the instance of Amarmani. The statement of the SSP shows that Amarmani tried to sidetrack the matter by implicating Anuj Mishra and to ensure that the foetus was not removed or preserved or examined. When the SSP refused to comply, he was transferred. Kamaal Khan, NDTV correspondent/Bureau Chief, Lucknow and Deepak Gidwani, Bureau Chief, Sahara Samay TV have clearly stated that Amarmani informed them that he had complained to the Chief Minister that investigation was not being done properly and got Anil Aggarwal, SSP transferred; and that he also informed them that his private investigation showed that the deceased had married Anuj Mishra.

(*vi*) Amarmani thereafter managed to ensure that his confidant Yagya Narain Dixit was deputed to threaten Rishi Khare, room-mate of Anuj Mishra, to admit that there was a marriage between Anuj Mishra and Madhumita. The statement of Rishi Khare, the room-mate of Anuj Mishra at IIT Hostel, Kanpur showed that at the instance of Amarmani, Yagya Narain Dixit, SO of Manek Nagar suggested, threatened and coerced him to admit that he was a witness to the marriage of Madhumita with Anuj Mishra in spite of his repeatedly stating that he was not aware of any such marriage; and he even held out promises to Rishi Khare on behalf of Amarmani after repeatedly speaking to Amarmani Tripathi over the phone in his presence.

(*vii*) The statement of Rishi Khare shows that he and his father and his landlord were taken by Yagya Narain Dixit to meet Amarmani, who demanded that he should speak about the wedding of Anuj Mishra and the deceased. In his presence Amarmani also informed Yagya Narain Dixit that if Rishi Khare refused to admit of being a witness to such marriage he should use tougher methods to make him admit the wedding between Anuj Mishra and Madhumita. He also threatened Rishi Khare that he can be

framed by showing that a country-made revolver was recovered from him, thereby landing him in jail.

(*viii*) Kamaal Khan, NDTV correspondent/Bureau Chief, Lucknow and Deepak Gidwani, Bureau Chief, Sahara Samay TV were invited by him and told them that he had a major scoop which would turn the entire story of *Madhumita's case* upside down. That Madhumita's case was not being investigated properly and he was doing his own investigation. That he has been able to identify the real killers of Madhumita. Madhumita was married to Anuj Mishra and the marriage was performed by a priest who was present in the house and was introduced to them.

24. The evidence collected above discloses that there were repeated attempts by the accused Amarmani to interfere and sidetrack the investigation and threaten the witnesses to come out with a story that would deflect the suspicion from him and his wife to Anuj Mishra or others. It is also not in dispute that Amarmani was on bail in a kidnapping case, when he indulged in these activities in May 2003. These materials were placed by the prosecution before the High Court to establish a reasonable apprehension of tampering. The learned Single Judge has, however, completely ignored these materials relating to tampering with evidence/witnesses. This necessitates interference with the order of the High Court.

28. In *Panchanan Mishra case* [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] it has been held that the court must apply its mind and go into the merits and evidence on record and determine whether a prima facie case was established against the accused. It was held that the seriousness and gravity of the crime was also a relevant consideration. That a balance has to be drawn by the court to protect fair trial and to secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in a heinous crime and if there is delay in such a case the underlying

object of cancellation of bail practically loses all its purpose and significance to the great prejudice and the interest of the prosecution. The Court summed up the principle that the ground to deny bail will be when by testing the balance of probabilities it appears that the accused has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice. It was noticed by the Court that once a person is released on bail in serious criminal cases where the punishment is stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the victim and also create problems of law and order.

29. In *Prahlad Singh Bhati* v. *NCT, Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] this Court reiterated that if a person was suspected of the crime of an offence punishable with death or imprisonment for life then there must exist grounds which specifically negate the existence of reasonable ground for believing that such an accused is guilty of an offence punishable with sentence of death or imprisonment for life. The jurisdiction to grant bail must be exercised on the basis of well-settled principles having regard to the circumstances of each case. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused and reasonable apprehension of witnesses being tampered with.

30. In *Kalyan Chandra Sarkar case* [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] this Court reiterated that while granting bail, discretion must be exercised in a judicious manner and not as a matter of course. It may not be necessary to do detailed examination of evidence and documentation of the merit of the case but there is a need to indicate reasons for prima facie

conclusion, why bail was being granted particularly where the accused is charged of having committed serious offence.

This extract is taken from *Gobarbhai Naranbhai Singala v. State of Gujarat*, (2008) 3 SCC 775 : (2008) 2 SCC (Cri) 743 : 2008 SCC OnLine SC 191 at page 781

18. The High Court by the impugned order has granted bail to the respondent Jayrajsinh Jadeja (in the second case) on three grounds — **(*i*) that the respondent was in judicial custody since March 2004; (*ii*) that trial had yet not commenced and no prosecution witness had been examined; and (*iii*) that the Court had tested the respondent twice by granting temporary bail to him with stringent conditions for a duration of one month each i.e. from 27-12-2005 to 27-1-2006 and 6-3-2006 to 5-4-2006 and, on both the occasions, the respondent had surrendered within time, without breach of any of the conditions.**

19. From a reading of the impugned order it is found that the learned Judge, who incidentally happens to be the same Judge who had declined to release the respondent on bail earlier, did not advert to any of the reasons given by him declining to release the respondent on bail. There was no change of circumstances. The reasons given by the learned Judge in the impugned order for grant of bail are untenable.

20. That the respondent did not misuse his liberty while on temporary bail twice by itself is no ground to grant bail in a murder case especially when he was allegedly involved in a subsequent case of murder. It may be mentioned here that apart from the present two cases of murder, the respondent has been named in 10 other criminal cases in the last 25 years or so, out of which 5 cases were under Section 307 IPC for attempt to murder and another under Section 302 IPC for committing murder. We are informed at the Bar that the respondent has been acquitted in most of the cases for want of sufficient

evidence. This speaks volumes. We refrain from saying anything further, lest it may prejudice the trial in these two cases.

21. The other reason given in the impugned order is that the trial of the case has not progressed/begun. We find from the record that between 2-6-2004 and 19-12-2005 the case was listed before the trial court 31 times and on each date, it had to be adjourned on the ground that one or the other accused was not present. There are 16 accused in the case. It is not clear from the record whether the accused were not brought by the police from the jail or that they were on bail and had not appeared of their own, but the fact remains that the complainants were not in any way instrumental in delaying the trial between 2-6-2004 and 19-12-2005. It was brought to our notice that the only witness who has been examined so far has turned hostile. Trial was stayed by the High Court on 15-2-2007 at the instance of the appellant as Shri R.R. Trivedi, APP, to whom the case had been assigned for conducting the trial and was allegedly the counsel for the respondent in some other case earlier, continued to appear in the case in spite of the fact that he was replaced by another APP. It just shows that the trial was not progressing smoothly. In any case, the complainant party was in no way responsible for any delay in trial.

22. The third reason given by the High Court for grant of bail, that the respondent had been in jail for the last more than 2 years, is equally untenable in view of the observations made by this Court in *State of U.P.* v. *Amarmani Tripathi* [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] : (SCC p. 32, para 19)

> "*19.* … '*14.* … the condition laid down under Section 437(1)(*i*) is sine qua non for granting bail even under Section 439 of the Code. *In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life*

imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.' " [**Ed.**: As observed in *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528 at pp. 536-37, para 14 : 2004 SCC (Cri) 1977.]

(underlining [**Ed.**: Herein italicised.] is ours)

23. Shri Arun Jaitley, learned Senior Counsel appearing for the respondents, submitted that this Court should not ordinarily interfere in the matters relating to bail. It was pointed out that in the last two years, the respondent has not misused the liberty granted to him. There is no doubt that this Court does not ordinarily interfere in the matters granting bail but the same is subject to certain exceptions. When the basic requirements necessary for grant of bail are completely ignored by the High Court, this Court would be justified in cancelling the bail**. In the present case, three witnesses, who had allegedly seen the occurrence, have unequivocally in their statements under Section 161 CrPC stated that the respondent, was present at the time of occurrence and he had fired from his gun. Prima facie a case for grant of bail was not made out.**

25. In *Panchanan Mishra* v. *Digambar Mishra* [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] this Court while considering the question of cancellation of bail, observed: (SCC pp. 147-48, para 13)

"*13.* … The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime … It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation."

26. We are of the view that the High Court has completely ignored the general principles for grant of bail in a heinous crime of commission of murder in which the sentence, if convicted, is death or life imprisonment.

This extract is taken from *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765 : 2010 SCC OnLine SC 1242 at page 499

9. We are of the opinion that the impugned order is clearly unsustainable. 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;

10. 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. In *Masroor* [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows : (SCC p. 290, para 13)

"*13.* … Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may

prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence."

(See also *State of Maharashtra* v. *Ritesh* [(2001) 4 SCC 224 : 2001 SCC (Cri) 671] , *Panchanan Mishra* v. *Digambar Mishra* [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] , *Vijay Kumar* v. *Narendra* [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and *Anwari Begum* v. *Sher Mohammad* [(2005) 7 SCC 326 : 2005 SCC (Cri) 1669] .)

(*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.

[See *State of U.P.* v. *Amarmani Tripathi* [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), *Prahlad Singh Bhati* v. *NCT of Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and *Ram Govind Upadhyay* v. *Sudarshan Singh* [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]

11. We are constrained to observe that in the instant case, while dealing with the application of the accused for grant of bail, the High Court completely lost sight of the basic principles enumerated above. The accused, in the present case, is alleged to have committed a heinous crime of killing an old helpless lady by strangulation. He was seen coming out of the victim's house by a neighbour around the time of the alleged occurrence, giving rise to a reasonable belief that he had committed the murder. We feel that under the given circumstances, it was not the stage at which bail under Section 439 of the Code should have been granted to the accused, more so, when even charges have not yet been framed.

12. It is also pertinent to note that, as stated above, the Additional Chief Judicial Magistrate had rejected three bail applications of the accused but the High Court did not find it worthwhile to even make a reference to these orders. In this regard, it would be useful to refer to the following observations echoed in *Kalyan Chandra Sarkar* v. *Rajesh Ranjan* [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC p. 536, para 12)

> "*12*. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted."

(See also *Ram Pratap Yadav* v. *Mitra Sen Yadav* [(2003) 1 SCC 15 : 2003 SCC (Cri) 1] .)

This extract is taken from *Neeru Yadav v. State of U.P.*, (2016) 15 SCC 422 : (2016) 4 SCC (Cri) 647 : 2015 SCC OnLine SC 862 at page 425

5. At the outset we are obliged to clarify that it is not an appeal seeking cancellation of bail in the strictest sense. It actually calls in question the legal pregnability of the order passed by the High Court. The prayer for cancellation of bail is not sought on the foundation of any kind of supervening circumstances or breach of any condition imposed by the High Court. The basic assail is to the manner in which the High Court has exercised its jurisdiction under Section 439 CrPC while admitting the accused to bail. To clarify, if it has failed to take into consideration the relevant material factors, it would make the order absolutely perverse and totally indefensible. That is why there is a difference between cancellation of an order of bail and legal sustainability of an order granting bail. (See *State of U.P.* v. *Amarmani Tripathi* [*State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] , *Puran* v. *Rambilas* [*Puran* v. *Rambilas*, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] , *Narendra K. Amin* v. *State of Gujarat* [*Narendra K. Amin* v. *State of Gujarat*, (2008) 13 SCC 584 : (2009) 3 SCC (Cri) 813] and *Prakash Kadam* v. *Ramprasad Vishwanath Gupta* [*Prakash Kadam* v. *Ramprasad Vishwanath Gupta*, (2011) 6 SCC 189 : (2011) 2 SCC (Cri) 848] .)

8. It is interesting to note that the learned counsel for the appellant and the learned counsel for the State submitted that Respondent 2 is still in jail despite the order of bail as he is involved in so many cases. We will take up the said issue at a later stage. It is submitted by Mr Yadav, learned counsel for the appellant that despite the factum of criminal history pointed out before the High Court, it has given it a glorious ignore which the law does not countenance. The solitary and the singular grievance which is propounded with solidity that the High Court should have dwelt upon the same and thereafter decided the matter. Mr Dash, learned Senior Counsel (though the State has not

moved any application for setting aside the order of bail granted by the High Court for the reasons which are unfathomable) unhesitatingly accepted the said submission. In the additional affidavit, an independent chart has been filed by the State and we find that apart from the present case, there are seven cases pending against Respondent 2. The chart of the said cases is reproduced below:

"1. FIR No. 664 of 2002 under Section 302 IPC, Police Station Kavi Nagar, Ghaziabad.

2. FIR No. 558 of 2004 under Sections 392, 411 IPC, Police Station Kotwali, District Bulandshahar.

3. FIR No. 14 of 2005 under Sections 398, 401, 307 IPC Police Station Noida, Gautam Budh Nagar.

4. FIR No. 15 of 2005 under Sections 25, 27, Arms Act, Police Station Sector 49, Noida, Gautam Budh Nagar.

5. FIR No. 1614 of 2008 under Sections 364, 302, 201 IPC, Police Station Sihani Gate, Ghaziabad.

6. FIR No. 98 of 2005 under Section 2/3 Gangster Act, Police Station Sector 49, Noida, Gautam Budh Nagar.

7. FIR No. 451 of 2012 under Section 60 Police Station Sector 49 Noida, Gautam Budh Nagar."

9. On a perusal of the aforesaid list, it is quite vivid that Respondent 2 **is a history-sheeter** and is involved in heinous offences. Having stated the facts and noting the nature of involvement of the accused in the crimes in question, there can be no scintilla of doubt to name him a "history-sheeter". The question, therefore, arises whether in these circumstances, should the High Court have enlarged him on bail on the foundation of parity.

11. It is a well-settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are : (*i*) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (*ii*) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (*iii*) prima facie satisfaction of the Court in support of the charge. (See *Chaman Lal* v. *State of U.P.* [*Chaman Lal* v. *State of U.P.*, (2004) 7 SCC 525 : 2004 SCC (Cri) 1974])

15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightning having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.

This extract is taken from *Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558 : 2019 SCC OnLine SC 1556 at page 123

11. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 CrPC to grant bail. The power to grant bail under Section 439 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. In *Ram Govind Upadhyay* v. *Sudarshan Singh* [*Ram Govind Upadhyay* v. *Sudarshan Singh*, (2002) 3 SCC 598 : 2002 SCC (Cri) 688] , Umesh Banerjee, J. speaking for a two-Judge Bench of this Court, laid down the factors that must guide the exercise of the power to grant bail in the following terms : (SCC p. 602, paras 3-4)

> "*3.* Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. … The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.
>
> *4.* Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:
>
> (*a*) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the

accusation entails a conviction and the nature of evidence in support of the accusations.

(*b*) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(*c*) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(*d*) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

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 straitjacket 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 subserves 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 [*Ashish Chatterjee* v. *State of W.B.*, CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting bail were succinctly laid down by this Court in *Prasanta Kumar Sarkar* v. *Ashis Chatterjee* [*Prasanta Kumar Sarkar* v. *Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] . 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 [*Ashish Chatterjee* v. *State of W.B.*, CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] of the High Court, D.K. Jain, J., speaking for a two-Judge Bench of this Court, held : (SCC pp. 499-500, paras 9-10)

"*9.* … It is trite that this Court does not, normally, interfere with an order [*Ashish Chatterjee* v. *State of W.B.*, CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] 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.

10. 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.

15. The decision of this Court in *Prasanta* [*Prasanta Kumar Sarkar* v. *Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] has been consistently followed by this Court in *Ash Mohammad* v. *Shiv*

Raj Singh **[*Ash Mohammad* v. *Shiv Raj Singh*, (2012) 9 SCC 446 : (2012) 3 SCC (Cri) 1172] , *Ranjit Singh* v. *State of M.P.* [*Ranjit Singh* v. *State of M.P.*, (2013) 16 SCC 797 : (2014) 6 SCC (Cri) 405] , *Neeru Yadav* v. *State of U.P.* [*Neeru Yadav* v. *State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , *Virupakshappa Gouda* v. *State of Karnataka* [*Virupakshappa Gouda* v. *State of Karnataka*, (2017) 5 SCC 406 : (2017) 2 SCC (Cri) 542] and *State of Orissa* v. *Mahimananda Mishra* [*State of Orissa* v. *Mahimananda Mishra*, (2018) 10 SCC 516 : (2019) 1 SCC (Cri) 325] .**

16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In *Neeru Yadav* v. *State ofU.P.* [*Neeru Yadav* v. *State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , the accused was granted bail by the High Court [*Mitthan Yadav* v. *State of U.P.*, 2014 SCC OnLine All 16031] . In an appeal against the order [*Mitthan Yadav* v. *State of U.P.*, 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. (as the learned Chief Justice then was) held : (*Neeru Yadav case* [*Neeru Yadav* v. *State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , SCC p. 513, para 12)

"*12.* … It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening

circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court."

17. 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. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment. The order [*Rajesh Kumar* v. *State of Rajasthan*, 2019 SCC OnLine Raj 5197] of the High Court in the present case, insofar as it is relevant reads : (*Rajesh Kumar case* [*Rajesh Kumar* v. *State of Rajasthan*, 2019 SCC OnLine Raj 5197] , SCC OnLine Raj paras 2-4)

"*2.* Counsel for the petitioner submits that the petitioner has been falsely implicated in this matter. Counsel further submits that, the deceased was driving his motorcycle, which got slipped on a sharp turn, due to which he received injuries on various parts of body including ante-mortem head injuries on account of which he died. Counsel further submits that the

challan has already been presented in the court and conclusion of trial may take long time.

3. The learned Public Prosecutor and counsel for the complainant have opposed the bail application.

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."

19. A total of twenty-seven ante-mortem injuries were recorded of which seven were found to be inflicted on the head. This led the members of the Medical Board to conclude that the cause of death was coma brought about by the result of the head injuries. The learned counsel for the first respondent contended that the deceased fell from the bike and sustained injuries which led to his death. However, it is not for the court to assess in detail the evidence on record to come to a conclusive finding on a chain of causation. A court assessing a plea of bail is required to find a prima facie view of the possibility of the commission of the crime by the accused and not conclude that the alleged crime was in fact committed by the accused beyond reasonable doubt.

22. Without expressing any finding or opinion on the merits of the case, a case has been made out for setting aside the bail granted by the High Court. The High Court has manifestly erred in not taking note of the material which has been adverted to above. The order passed by the High Court fails to notice material facts and shows a non-application of mind to the seriousness of the crime and the circumstances referred to earlier which ought to have been taken into consideration.

This extract is taken from *P. Chidambaram v. CBI*, (2020) 13 SCC 337 : (2020) 4 SCC (Cri) 528 : 2019 SCC OnLine SC 1380 at page 349

20. In this appeal, we are only concerned with the question of grant of bail or otherwise to the appellant in the CBI case. We have referred to the submission of the learned Senior Counsel for the appellant and the learned Solicitor General only for the sake of completion of the sequence of the contentions raised. Since the matter pertaining to the Enforcement Directorate is pending before the court concerned, we are not expressing any opinion on the merits of the rival contention; lest it might prejudice the parties in the appropriate proceedings.

21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:

(*i*) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(*ii*) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(*iii*) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(*iv*) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(*v*) larger interest of the public or the State and similar other considerations.

[Vide *Prahlad Singh Bhati* v. *State (NCT of Delhi)* [*Prahlad Singh Bhati* v. *State (NCT of Delhi)*, (2001) 4 SCC 280 : 2001 SCC (Cri) 674] .]

22. There is no hard-and-fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. At this stage itself, it is necessary for us to indicate that we are unable to accept the contention of the learned Solicitor General that "flight risk" of economic offenders should be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country. The same cannot, in our view, be put in a straitjacket formula so as to deny bail to the one who is before the court, due to the conduct of other offenders, if the person under consideration is otherwise entitled to bail on the merits of his own case. Hence, in our view, such consideration including as to "flight risk" is to be made on individual basis being uninfluenced by the unconnected cases, more so, when the personal liberty is involved.

23. In *Kalyan Chandra Sarkar* v. *Rajesh Ranjan* [*Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] , it was held as under : (SCC pp. 535-36, para 11)

> "*11.* The law in regard to grant or refusal of bail is very well-settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(*a*) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(*b*) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(*c*) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay* v. *Sudarshan Singh* [*Ram Govind Upadhyay* v. *Sudarshan Singh*, (2002) 3 SCC 598 : 2002 SCC (Cri) 688] and *Puran* v. *Rambilas* [*Puran* v. *Rambilas*, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)"

24. Referring to the factors to be taken into consideration for grant of bail, in *Jayendra Saraswathi Swamigal* v. *State of T.N.* [*Jayendra Saraswathi Swamigal* v. *State of T.N.*, (2005) 2 SCC 13 : 2005 SCC (Cri) 481] , it was held as under : (SCC pp. 21-22, para 16)

"*16.* ... The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in *State* v. *Jagjit Singh* [*State* v. *Jagjit Singh*, AIR 1962 SC 253 : (1962) 1 Cri LJ 215] and *Gurcharan Singh* v. *State (Delhi Admn.)* [*Gurcharan Singh* v. *State (Delhi Admn.)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41] and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case."

25. After referring to para 11 of *Kalyan Chandra Sarkar* [*Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] , in *State of U.P.* v. *Amarmani Tripathi* [*State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] , it was held as under : (*Amarmani Tripathi case* [*State*

of U.P. v. *Amarmani Tripathi*, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] , SCC p. 31, para 18)

> "*18.* It is well-settled that the matters to be considered in 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 charge; (*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 tampered with*; and (*viii*) *danger, of course, of justice being thwarted by grant of bail* [see *Prahlad Singh Bhati* v. *State (NCT of Delhi)* [*Prahlad Singh Bhati* v. *State (NCT of Delhi)*, (2001) 4 SCC 280 : 2001 SCC (Cri) 674] and *Gurcharan Singh* v. *State (Delhi Admn.)* [*Gurcharan Singh* v. *State (Delhi Admn.)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."
>
> (emphasis in original)

27. As discussed earlier, insofar as the "flight risk" and "tampering with evidence" are concerned, the High Court held in favour of the appellant by holding that the appellant is not a "flight risk" i.e. "no possibility of his abscondence". The High Court rightly held that by issuing certain directions like "surrender of passport", "issuance of lookout notice", "flight risk" can be secured. So far as "tampering with evidence" is concerned, the High Court rightly held that the documents relating to the case are in the custody of the prosecuting agency, the Government of India and the Court and there is no chance of the appellant tampering with evidence.

This extract is taken from *Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 SCC 427 : 2020 SCC OnLine SC 964 at page 462

47. The above decision thus arose in a situation where the High Court had declined to entertain a petition for quashing an FIR under Section 482 CrPC. However, it nonetheless directed the investigating agency not to arrest the accused during the pendency of the investigation. This was held to be impermissible by this Court. On the other hand, this Court clarified that the High Court if it thinks fit, having regard to the parameters for quashing and the self-restraint imposed by law, has the jurisdiction to quash the investigation "and may pass appropriate interim orders as thought apposite in law". Clearly therefore, the High Court in the present case has misdirected itself in declining to enquire prima facie on a petition for quashing whether the parameters in the exercise of that jurisdiction have been duly established and if so whether a case for the grant of interim bail has been made out. The settled principles which have been consistently reiterated since the judgment of this Court in *State of Haryana* v. *Bhajan Lal* [*State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] ("*Bhajan Lal*") include a situation where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. This legal position was recently reiterated in a decision by a two-Judge Bench of this Court in *Kamal Shivaji Pokarnekar* v. *State of Maharashtra* [*Kamal Shivaji Pokarnekar* v. *State of Maharashtra*, (2019) 14 SCC 350 : (2019) 4 SCC (Cri) 846] .

I. Prima facie evaluation of the FIR and the grant of bail

48. The striking aspect of the impugned judgment [*Arnab Manoranjan Goswami* v. *State of Maharashtra*, 2020 SCC OnLine Bom 2693] of the High Court spanning over fifty-six pages is the absence of any evaluation even prima

facie of the most basic issue. The High Court, in other words, failed to apply its mind to a fundamental issue which needed to be considered while dealing with a petition for quashing under Article 226 of the Constitution or Section 482 CrPC. The High Court, by its judgment dated 9-11-2020 [*Arnab Manoranjan Goswami* v. *State of Maharashtra*, 2020 SCC OnLine Bom 2693] , has instead allowed the petition for quashing to stand over for hearing a month later, and therefore declined to allow the appellant's prayer for interim bail and relegated him to the remedy under Section 439 CrPC. In the meantime, liberty has been the casualty. The High Court having failed to evaluate prima facie whether the allegations in the FIR, taken as they stand, bring the case within the fold of Section 306 read with Section 34 IPC, this Court is now called upon to perform the task.

64. While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors which emerge from the precedents of this Court. These factors can be summarised as follows:

64.1. The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction.

64.2. Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses.

64.3. The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice.

64.4. The antecedents of and circumstances which are peculiar to the accused.

64.5. Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR.

64.6. The significant interests of the public or the State and other similar considerations.

65. These principles have evolved over a period of time and emanate from the following (among other) decisions : *Prahlad Singh Bhati* v. *State (NCT of Delhi)* [*Prahlad Singh Bhati* v. *State (NCT of Delhi)*, (2001) 4 SCC 280 : 2001 SCC (Cri) 674] ; *Ram Govind Upadhyay* v. *Sudarshan Singh* [*Ram Govind Upadhyay* v. *Sudarshan Singh*, (2002) 3 SCC 598 : 2002 SCC (Cri) 688] ; *State of U.P.* v. *Amarmani Tripathi* [*State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] ; *Prasanta Kumar Sarkar* v. *Ashis Chatterjee* [*Prasanta Kumar Sarkar* v. *Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] ; *Sanjay Chandra* v. *CBI* [*Sanjay Chandra* v. *CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] and *P. Chidambaram* v. *CBI* [*P. Chidambaram* v. *CBI*, (2020) 13 SCC 337 : (2020) 4 SCC (Cri) 528] .

66. These principles are equally applicable to the exercise of jurisdiction under Article 226 of the Constitution when the court is called upon to secure the liberty of the accused. The High Court must exercise its power with caution and circumspection, cognizant of the fact that this jurisdiction is not a ready substitute for recourse to the remedy of bail under Section 439 CrPC. In the backdrop of these principles, it has become necessary to scrutinise the contents of the FIR in the case at hand. In this batch of cases, a prima facie evaluation of the FIR does not establish the ingredients of the offence of abetment of suicide under Section 306 IPC. The appellants are residents of India and do not pose a flight risk during the investigation or the

trial. There is no apprehension of tampering of evidence or witnesses. Taking these factors into consideration, the order dated 11-11-2020 [*Arnab Manoranjan Goswami* v. *State of Maharashtra*, (2021) 1 SCC 802] envisaged the release of the appellants on bail.

J. *Human liberty and the Role of courts*

67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC "or prevent abuse of the process of any court or otherwise to secure the ends of justice". Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one—and a significant—end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognised the inherent power in Section 561-A. Post-Independence, the recognition by Parliament [Section 482 CrPC, 1973] of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation

of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum—the district judiciary, the High Courts and the Supreme Court—to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum—the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.

68. Mr Kapil Sibal, Mr Amit Desai and Mr Chander Uday Singh are undoubtedly right in submitting that the procedural hierarchy of courts in

matters concerning the grant of bail needs to be respected. However, there was a failure of the High Court to discharge its adjudicatory function at two levels—first in declining to evaluate prima facie at the interim stage in a petition for quashing the FIR as to whether an arguable case has been made out, and secondly, in declining interim bail, as a consequence of its failure to render a prima facie opinion on the first. The High Court did have the power to protect the citizen by an interim order in a petition invoking Article 226. Where the High Court has failed to do so, this Court would be abdicating its role and functions as a constitutional court if it refuses to interfere, despite the parameters for such interference being met. The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponised for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defence against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions.

69. It would be apposite to extract the observations made, albeit in a dissenting opinion, by one of us (Dhananjaya Y. Chandrachud, J.) in a decision of a three-Judge Bench in *Romila Thapar* v. *Union of India* [*Romila Thapar* v. *Union of India*, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638] : (SCC p. 796, para 79)

> "*79.* …[T]he basic entitlement of every citizen who is faced with allegations of criminal wrongdoing, is that the investigative process should be fair. This is an integral component of the guarantee against arbitrariness under Article 14 and of the right to life and personal liberty under Article 21. If this Court were not to stand by the principles which we have formulated, we may witness a soulful requiem to liberty."

The decision was a dissent in the facts of the case. The view of the leading majority judgment is undoubtedly the view of the Court, which binds us.

However, the principle quoted above is in line with the precedents of this Court.

70. More than four decades ago, in a celebrated judgment in *State of Rajasthan* v. *Balchand* [*State of Rajasthan* v. *Balchand*, (1977) 4 SCC 308 : 1977 SCC (Cri) 594] , Krishna Iyer, J. pithily reminded us that the basic rule of our criminal justice system is "bail, not jail" [These words of Krishna Iyer, J. are not isolated silos in our jurisprudence, but have been consistently followed in judgments of this Court for decades. Some of these judgments are : *State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2) and *Sanjay Chandra* v. *CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] . The High Courts and courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the "subordinate judiciary". It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground—in the jails and police stations where human dignity has no protector. As Judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the "solemn expression of the humaneness of the justice system" [Arghya Sengupta and

Ritvika Sharma, 'Saharashri and the Supremes', (The Wire, 23-6-2015) available at <https://thewire.in/economy/saharashri-and-the-supremes>] . Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this Court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard.

73. Since the proceedings are pending before the High Court, we clarify that the observations on the facts contained in the present judgment are confined to a determination whether a case for grant of interim protection was made out. Equally, the observations which are contained in the impugned order [*Arnab Manoranjan Goswami* v. *State of Maharashtra*, 2020 SCC OnLine Bom 2693] of the High Court were also at the interim stage and will not affect the final resolution of the issues which arise and have been raised before the High Court.

Delay

In

Trial

As

A

Ground

Of

Bail

This extract is taken from *Sanjay Chandra v. CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397 : 2011 SCC OnLine SC 1502 at page 61

36. This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused. (See *Babba* v. *State of Maharashtra* [(2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118], *Vivek Kumar* v. *State of U.P.* [(2000) 9 SCC 443 : 2001 SCC (Cri) 416] and *Mahesh Kumar Bhawsinghka* v. *State of Delhi* [(2000) 9 SCC 383 : 2001 SCC (Cri) 400].)

44. This Court, in *State of Kerala* v. *Raneef* [(2011) 1 SCC 784 : (2011) 1 SCC (Cri) 409] has stated: (SCC p. 789, para 15)

> "*15.* In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dickens's novel *A Tale of Two Cities*, who forgot his profession and even his name in the Bastille."

45. In *Bihar Fodder Scam* (*Laloo Prasad case* [*Laloo Prasad* v. *State of Jharkhand*, (2002) 9 SCC 372]) this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a

period of more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pretrial prisoners would not serve any purpose.

This extract is taken from *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1 : (2020) 2 SCC (Cri) 721 : 2020 SCC OnLine SC 98 at page 31

3.1. It is further submitted by Shri Viswanathan, learned Amicus Curiae that the power of arrest of the police is under Section 41 CrPC. It is submitted that this Section has two essential parts**. One**, relating to offences in which the maximum punishment can extend to imprisonment for seven years. **Second,** relating to offences in which the maximum punishment can extend to imprisonment above seven years or death penalty. It is submitted that though they have different conditions and thresholds, in both cases it is clear from a bare reading of the section that **the power of arrest cannot be exercised in every FIR that is registered under Section 154 CrPC**. It is submitted that this power is circumscribed by the conditions laid down in this Section. **Moreover, this principle that the power of arrest is not required to be exercised in every case was recognised** in ***Joginder Kumar* v. *State of U.P.*** **[*Joginder Kumar* v. *State of U.P.*, (1994) 4 SCC 260** : 1994 SCC (Cri) 1172] (para 20), ***Lalita Kumari* v. *State of U.P.*** [*Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] (paras 107-108) and ***Arnesh Kumar* v. *State of Bihar*** **[***Arnesh Kumar* v. *State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] (paras 5 and 6). It is submitted that, in fact, this Court in *M.C. Abraham* v. *State of Maharashtra* [*M.C. Abraham* v. *State of Maharashtra*, (2003) 2 SCC 649 : 2003 SCC (Cri) 628] (para 15) has held that it was not mandatory for the police to arrest a person only because his/her anticipatory bail had been rejected.

This extract is taken from *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260 : 1994 SCC (Cri) 1172 at page 265

12. The National Police Commission in its Third Report referring to the quality of arrests by the police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails. The said Commission in its Third Report at p. 31 observed thus:

> "It is obvious that a major portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention. Continued detention in jail of the persons so arrested has also meant avoidable expenditure on their maintenance. In the above period it was estimated that 43.2 per cent of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all."

As on today, arrest with or without warrant depending upon the circumstances of a particular case is governed by the Code of Criminal Procedure.

19. The Royal Commission suggested restrictions on the power of arrest on the basis of the "necessity of (*sic*) principle". The two main objectives of this principle are that police can exercise powers only in those cases in which it was genuinely necessary to enable them to execute their duty to prevent the commission of offences, to investigate crime. The Royal Commission was of the view that such restrictions would diminish the use of arrest and produce more uniform use of powers. The *Royal Commission Report on Criminal Procedure* — Sir Cyril Philips at p. 45 said:

> "… we recommend that detention upon arrest for an offence should continue only on one or more of the following criteria:
>
> (*a*) the person's unwillingness to identify himself so that a summons may be served upon him;
>
> (*b*) the need to prevent the continuation or repetition of that offence;
>
> (*c*) the need to protect the arrested person himself or other persons or property;

(*d*) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and

(*e*) the likelihood of the person failing to appear at court to answer any charge made against him."

The Royal Commission in the abovesaid report at p. 46 also suggested:

"To help to reduce the use of arrest we would also propose the introduction here of a scheme that is used in Ontario enabling a police officer to issue what is called an appearance notice. That procedure can be used to obtain attendance at the police station without resorting to arrest provided a power to arrest exists, for example to be fingerprinted or to participate in an identification parade. It could also be extended to attendance for interview at a time convenient both to the suspect and to the police officer investigating the case …."

20. In India, *Third Report of the National Police Commission* at p. 32 also suggested:

"An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(*i*) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

(*ii*) The accused is likely to abscond and evade the processes of law.

(*iii*) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(*iv*) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines …."

The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for

the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.

This extract is taken from *Siddharth v. State of U.P.*, (2022) 1 SCC 676 : 2021 SCC OnLine SC 615 at page 679

FACTS: 2. The fact which emerges is that the appellant along with 83 other private persons were sought to be roped in a FIR which was registered seven years ago. The appellant claims to be supplier of stone for which royalty was paid in advance to these holders and claims not to be involved in the tendering process. Similar person was stated to have been granted interim protection until filing of the police report. The appellant had already joined the investigation before approaching this Court and the charge-sheet was stated to be ready to be filed. However, the reason to approach this Court was on account of arrest memo having been issued.

3. It is not disputed before us by the learned counsel for the respondent that the charge-sheet is ready to be filed but submits that the trial court takes a view that unless the person is taken into custody the charge-sheet will not be taken on record in view of Section 170 CrPC.
Statutory Provision:

4. In order to appreciate the controversy we reproduce the provision of Section 170 CrPC as under:

> "**170. *Cases to be sent to Magistrate, when evidence is sufficient*.**—(1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day-to-day before such Magistrate until otherwise directed."

There are judicial precedents available on the interpretation of the aforesaid provision albeit of the Delhi High Court.

Ratio: 5. In *High Court of Delhi* v. *CBI* [*High Court of Delhi* v. *CBI*, 2004 SCC OnLine Del 53 : (2004) 72 DRJ 629] , the Delhi High Court dealt with an argument similar to the contention of the respondent that Section 170 CrPC

prevents the trial court from taking a charge-sheet on record unless the accused is taken into custody. The relevant extracts are as under : (SCC OnLine Del paras 15-16 & 19-20)

> "*15*. Word "custody" appearing in this section does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the investigating officer before the Court at the time of filing of the charge-sheet whereafter the role of the Court starts. Had it not been so the investigating officer would not have been vested with powers to release a person on bail in a bailable offence after finding that there was sufficient evidence to put the accused on trial and it would have been obligatory upon him to produce such an accused in custody before the Magistrate for being released on bail by the Court.
>
> *16*. In case the police/investigating officer thinks it unnecessary to present the accused in custody for the reason that the accused would neither abscond nor would disobey the summons as he has been cooperating in investigation and investigation can be completed without arresting him, the IO is not obliged to produce such an accused in custody.
>
> *19*. It appears that the learned Special Judge was labouring under a misconception that in every non-bailable and cognizable offence the police is required to invariably arrest a person, even if it is not essential for the purpose of investigation.
>
> *20*. Rather the law is otherwise. In normal and ordinary course the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by the accused to the investigating officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the investigating officer concerned or officer in charge of the police station thinks that presence of the accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out."

6. In a subsequent judgment the Division Bench of the Delhi High Court in *High Court of Delhi* v. *State* [*High Court of Delhi* v. *State*, 2018 SCC OnLine

Del 12306 : (2018) 254 DLT 641] relied on these observations in *High Court of Delhi* [*High Court of Delhi* v. *CBI*, 2004 SCC OnLine Del 53 : (2004) 72 DRJ 629] and observed that it is not essential in every case involving a cognizable and non-bailable offence that an accused be taken into custody when the charge-sheet/final report is filed.

8. In *Deendayal Kishanchand* v. *State of Gujarat* [*Deendayal Kishanchand* v. *State of Gujarat*, 1982 SCC OnLine Guj 172 : 1983 Cri LJ 1583] , the High Court observed as under : (SCC OnLine Guj paras 2 & 8)

> "*2.* ... It was the case of the prosecution that two accused i.e. present Petitioners 4 and 5, who are ladies, were not available to be produced before the court along with the charge-sheet, even though earlier they were released on bail. Therefore, as the court refused to accept the charge-sheet unless all the accused are produced, the charge-sheet could not be submitted, and ultimately also, by a specific letter, it seems from the record, the charge-sheet was submitted without Accused 4 and 5. This is very clear from the evidence on record.
>
> *8.* I must say at this stage that the refusal by criminal courts either through the learned Magistrate or through their office staff to accept the charge-sheet without production of the accused persons is not justified by any provision of law. Therefore, it should be impressed upon all the courts that they should accept the charge-sheet whenever it is produced by the police with any endorsement to be made on the charge-sheet by the staff or the Magistrate pertaining to any omission or requirement in the charge-sheet. But when the police submits the charge-sheet, it is the duty of the court to accept it especially in view of the provisions of Section 468 of the Code which creates a limitation of taking cognizance of offence. Likewise, police authorities also should impress on all police officers that if charge-sheet is not accepted for any such reason, then attention of the Sessions Judge should be drawn to these facts and get suitable orders so that such difficulties would not arise henceforth."

9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the

charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet.

This extract is taken from *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449 : 2014 SCC OnLine SC 532 at page 279

8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

8.1. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the

detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(*b*)(*ii*);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they

shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

This extract is taken from *Mohd. Asfak Alam v. State of Jharkhand*, (2023) 8 SCC 632 : 2023 SCC OnLine SC 892 at page 641

16. The impugned order of rejecting the bail and directing the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside. Before parting, the Court would direct all the courts seized of proceedings to strictly follow the law laid down in *Arnesh Kumar* [*Arnesh Kumar* v. *State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449 : (2014) 8 SCR 128] and reiterate the directions contained thereunder, as well as other directions.

16.1. (I) *Arnesh Kumar case* [*Arnesh Kumar* v. *State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449 : (2014) 8 SCR 128] , SCC p. 281, paras 11-12

"*11.* Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrates do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-AIPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41CrPC;

11.2. All police officers be provided with a checklist containing specified sub-clauses under Section 41(1)(*b*)(*ii*);

11.3. The police officer shall forward the checklist duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-ACrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-AIPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine."

16.2. (II) The High Court shall frame the above directions in the form of notifications and guidelines to be followed by the Sessions Courts and all other and criminal courts dealing with various offences.

16.3. (III) Likewise, the Director General of Police in all States shall ensure that strict instructions in terms of the above directions are issued. Both the High Courts and the DGPs of all States shall ensure that such guidelines and Directives/Departmental Circulars are issued for guidance of all lower courts and police authorities in each State within eight weeks from today.

16.4. (IV) Affidavits of compliance shall be filed before this Court within ten weeks by all the States and High Courts, through their Registrars.

This extract is taken from *Dolat Ram v. State of Haryana*, (1995) 1 SCC 349 : 1995 SCC (Cri) 237 at page 350

4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.

This extract is taken from *Kashmira Singh v. Duman Singh*, (1996) 4 SCC 693 : 1996 SCC (Cri) 844 at page 696

9. In the main, two grounds are put forward for cancellation of the bail, namely, (*i*) that the accused was guilty of suppression of the material fact that his co-accused's bail application was rejected twice and (*ii*) that there was only one case and not a cross-case against the complainant's party as was assumed while granting bail. In our view, neither of the two grounds would justify cancellation of bail.

10. Indisputably, there was a fight between two groups. Which party had launched the attack would be a matter of evidence but for the purpose of this appeal, we assume that the accused's side was the aggressor. The fact, however, remains that there was casualty on both sides since both sides were armed. Whether a cross-complaint was filed or not does not alter this factual reality. The possibility of the respondent's side being the aggressor, or there being a free fight cannot be overlooked altogether. Non-filing of a cross-complaint may be a relevant factor, but that there were injuries on both sides has to be accepted. This fact was known to the court when it granted bail. Therefore, in our view, this ground is not strong enough for cancellation of bail.

This extract is taken from *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1 : 2022 SCC OnLine SC 825 at page 132

Economic offences (Category D)

90. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in *P. Chidambaram* v. *Directorate of Enforcement* [*P. Chidambaram* v. *Directorate of Enforcement*, (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646] , after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field:

Precedents

91. *P. Chidambaram* v. *Directorate of Enforcement* [*P. Chidambaram* v. *Directorate of Enforcement*, (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646] : (SCC pp. 804-805, para 23)

> "*23.* Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench [*Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of

sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

92. *Sanjay Chandra* v. *CBI* [*Sanjay Chandra* v. *CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] : (SCC pp. 62-64, paras 39-40 & 46)

"*39*. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused

constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."

Economic Offences Constitute a Separate Class,

"A profitable reference can be made to the case of ***Parbatbhai Ahir v. State of Gujarat and Anr. [2017 (9) SCC 641]*** *wherein it was observed that economic offences by their very nature lie beyond the domain of mere dispute between private parties and the High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance. Thus, it can be concluded that economic offences by their very nature stand on a different footing than other offences and have wider ramifications. They constitute a class apart. Economic offences affect the economy of the country as a whole and pose a serious threat to the financial health of the country. If such offences are viewed lightly, the confidence and trust of the public will be shaken.",* the court said.

The Supreme Court recently refused to quash an FIR against a company's director for their alleged involvement in the economic offences, noting that the High Court erred in quashing the case despite being apprised with a factum aspect that the directors of the company, established certain dummy/shell companies and the monetary transaction were circulated to these shell/dummy companies.

The bench comprising **Justices Bela M. Trivedi and Prasanna B. Varale** was hearing the case in which the High Court quashed the criminal proceedings against the respondent's director arising out of economic offences just because there had been long-standing business dealings between the appellant and respondent company and the dispute seemed purely civil (non-payment of dues).

Reversing the High Court's decision, the judgment authored by **Justice Varale,** placing reliance on the case of ***Kurukshetra University and Anr. v. State of Haryana and Anr., (1977) 4 SCC 451,*** observed that the High Court should have refrained from quashing the FIR at the nascent stage of the investigation.

"The High Court also failed to note that when certain basic material was brought to the notice of the High Court about the criminal conspiracy hatched by the accused persons, it was necessary for the investigating agency to investigate thoroughly, in the process of unearthing the truth before the Court. This aspect could have been tested only by conducting a proper trial.", the court observed.

The Court reiterated that though the powers granted to the High Courts under Section 482 CrPC are wide and discretionary, they shall not be used arbitrarily to stifle legitimate investigations.

"It is true that there is a growing tendency of parties to rope in their counterparts to harass and extract monetary transaction, it is the duty of the Court to consider the facts of each case, in its proper perspective and then to arrive at the conclusion as to whether the case warrants investigation or the proceedings are required to be quashed. The peculiar facts and circumstances of the present case warrants thorough investigation as there was a huge amount involved. As we have already stated that when the petitioner approached the High Court for quashing of the FIR, the investigation was at its initial stage and subsequent to filing of the present Special Leave Petition in this Court it seems that the investigation was concluded by filing the chargesheet.", the court observed.

Economic Offences Constitute a Separate Class, Quashing FIRs Requires Caution

"A profitable reference can be made to the case of ***Parbatbhai Ahir v. State of Gujarat and Anr. [2017 (9) SCC 641]*** *wherein it was observed that economic offences by their very nature lie beyond the domain of mere dispute between private parties and the High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance. Thus, it can be concluded that economic offences by their very nature stand on a different footing than other offences and have wider ramifications. They constitute a class apart. Economic offences affect the economy of the country as a whole and pose a serious threat to the financial health of the country. If such offences are viewed lightly, the confidence and trust of the public will be shaken.",* the court said.

"we are of the view that the High Court was not justified in exercising its jurisdiction under Section 482 of CrPC. The appeals are accordingly allowed. It is clarified that the above-mentioned observations are only prima facie in nature and the trial court shall proceed without being influenced by this judgement/order and strictly in accordance with law.", the court ordered.

The appeal was allowed accordingly.

Case Title: DINESH SHARMA VERSUS EMGEE CABLES AND COMMUNICATION LTD. & ANR.

Citation : 2025 LiveLaw (SC) 492

3. 2024 SCC OnLine SC 3823 In the Supreme Court of India (BEFORE VIKRAM NATH AND PRASANNA B. VARALE, JJ.) Criminal Appellate Jurisdiction Criminal Appeal No. _____of 2024 (@ Special Leave Petition (Crl.) No. 10078 of 2023) **Anil Bhavarlal Jain and Another ... Appellant(s); Versus State of Maharashtra and Others ...** Respondent(s). With Criminal Appeal No. _____of 2024 (@ Special Leave Petition (Crl.) No. 12776 of 2023) Criminal Appellate Jurisdiction Criminal Appeal No. _____of 2024 (@ Special Leave Petition (Crl.) No. 10078 of 2023) and Criminal Appeal No. _____of 2024 (@ Special Leave Petition (Crl.) No. 12776 of 2023) Decided on December 20, 202

13. The Counsel for the appellant heavily relied on the case of Gian Singh (supra) to state that their case is squarely covered by the said judgment. Relevant paragraph from the said judgment can be extracted as below: "60 … criminal cases having overwhelmingly and predominantly civil flavour stand on a different footing for the purpose of quashing particularly the offences arising from commercial, financial, mercantile, civil partnership or such like transactions or the offences arising out of matrimony related to dowry etc or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases high court may quash criminal proceedings if in its view because of compromise between the offender and victim the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case. Despite full and complete settlement and compromise with the victim. In other words, the high Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of the criminal proceeding would tantamount to abuse of process of law…"

14. This Court in Gian Singh (supra) has dealt with the powers of the High Court under Section 482 r/w Section 320 of the CrPC and the consequent authority of the High Court to quash criminal proceedings, FIRs or complaints under its inherent jurisdiction as in contradistinction to the power with criminal courts for compounding offenses under Section 320 of the CrPC. The High Court observed that quashing was dependent on the unique circumstances of each case and though no fixed category can be established, heinous and severe offences should not be quashed even if the parties have settled. However, this Court in Gian Singh (supra) categorically made an observation that:

"61. ..... The offences of mental depravity under the Penal Code, 1860 or offences of moral turpitude under special statutes like Prevention of Corruption Act or the offences committed by the public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all."

15. In the light of above, the facts of the present case are distinguishable from the facts that came for consideration before this Court in the above case relied on by the appellants herein.

16. Another reference can be made to the judgment of this Court in Parbatbhai Aahir v. State of Gujrat8 wherein it was observed that, economic offenses involving financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between the private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance. Thus, it can be concluded that economic offences by their very nature stand on a different footing than other offences and have wider ramifications. They constitute a class apart. Economic offences affect the economy of the country as a whole and pose a serious threat to the financial health of the country. If such offences are viewed lightly, the confidence and trust of the public will be shaken.

17. A profitable reference in this regard can be made to the judgment in State v. R Vasanthi Stanley9 wherein this Court declined to quash the proceedings in a case involving alleged abuse of the financial system. It was observed as under:

"15. ..... A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial

health of the institutions is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the head on the system. That can never be an acceptable principle or parameter, for that would amount to destroying stem cells of law and order in many a realm and further strengthen the marrow of unscrupulous litigations. Such a situation should never be conceived of. 18. In the instant case, it is on record that consent terms were submitted by the parties before the DRT. It is admitted that the bank had suffered losses to the tune of Rs. 6.13 Crores approximately. Hence, a substantial injury was caused to the public exchequer and consequently it can be said that public interest has been hampered. Keeping in view the fact that in the present case a special statute i.e. PC Act has been invoked, we are of the view that quashing of offences under the said Act would have a grave and substantial impact not just on the parties involved, but also on the society at large. As such the High Court committed no error in declining to exercise its inherent powers in the present case, thereby refusing to quash the criminal proceedings.

This extract is taken from *Gajanan Dattatray Gore v. State of Maharashtra* and Another, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1 : 2022 SCC OnLine SC 825 at page 132

Economic offences (Category D)

15. We have noticed over a period of time that orders of regular bail and anticipatory bail are being passed by different High Courts subject to deposit of some amount.

16. We have come across cases like the one in hand where accused persons have gone to the extent of filing affidavits in the form of undertaking that they would deposit a particular amount within a particular period and then conveniently resile from such undertakings saying it is an onerous condition.

17. In some cases, perhaps the accused may abide by such undertaking, but our experience so far has been that in many cases the accused later would not abide and flout the undertaking. In many cases it would be argued on behalf of the accused that he had never made such a statement and the court on its own had recorded in the order that the accused is ready and willing to deposit a particular amount. At times the entire blame is thrown on the lawyer in making such statement for the purpose of obtaining order of bail or anticipatory bail as the case may be. In such circumstances, the concerned court would be left with no other option but to cancel the bail either at the instance of the State or the original complainant.

18. The case in hand is one in which the appellant on his own free will and volition filed an affidavit in the form of an undertaking beforethe High Court that he would deposit an amount of Rs. 25,00,000/- but ultimately resiled to do so and the High Court had to cancel the bail. It was too much for the lawyer of the appellant to argue before the High Court that asking his client to deposit Rs. 25,00,000/- was unreasonable. It reflects on the professional ethics.

19. By this order, we make it clear and that too in the form of directions that henceforth no Trial Court or any of the High Courts shall pass any order of grant of regular bail or anticipatory bail on any undertaking that the accused might be ready to furnish for the purpose of obtaining appropriate reliefs.

20. The High Courts as well as the Trial Courts shall decide the plea for regular bail or anticipatory bail strictly on the merits of the case. The High Courts and the Trial Courts shall not exercise their discretion in this regard on any undertaking or any statement that the accused may be ready and willing to make.

21. This practice has to be stopped. Litigants are taking the courts for a ride and thereby undermining the dignity and honor of the court.

22. We hope and trust that the High Courts as well as the Trial Courts across the country do not commit the same mistake again.

23. In the case in hand, so far as the plea for regular bail is concerned, we are not inclined to look into. The appellant has made a mockery of justice. He could be said to have abused the process of law. If at all the High Court wanted to release the appellant on bail, it should have first asked him to deposit the amount within a particular period of time and upon such deposit the appellant could have been released.

24. Be that as it may, now we have made ourselves very clear that there shall not be a single order that the High Courts and the Trial Courts shall pass for grant of regular bail or anticipatory bail on the basis of any accused or his/her family members giving an undertaking to deposit a particular amount. The plea shall be decided strictly on merits in accordance with law. If the case is made out on merits the court may exercise its discretion and if no case is made out on merits the court shall reject the plea for regular bail or anticipatory bail as the case may be. However, in any circumstances the High Courts or trial courts shall not pass a conditional order of regular bail or anticipatory bail.

25. This appeal fails and is hereby dismissed.

26. The Registry is directed to circulate one copy each of this order to all the High Courts at the earliest.

27. Once the appellant surrenders and is taken in judicial custody, it shall be open for him to file a fresh regular bail application before the Court concerned and such bail application shall be decided strictly on its own merits and in accordance with law. 28. We impose cost of Rs. 50,000/- for gross abuse of the process of law and taking the High Court as well as this Court for a ride. This amount shall be deposited within a period of one week from today before the Supreme Court Mediation Centre and the compliance be reported.

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