BRIJMANI DEVI

v.

PAPPU KUMAR & ANR.

(Criminal Appeal No.1663 of 2021)

DECEMBER 17, 2021

[L. NAGESWARA RAO, B. R. GAVAI AND B. V. NAGARATHNA]

Penal Code, 1860 – ss.302 r/w 34; 341, 307 r/w 34 – Bail – Respondent accused of murder of appellant's son – Bail rejected by Sessions Court –Granted by High Court with certain conditions – On appeal, held: Offences alleged against respondent are serious vis-a-vis *the appellant's son at two points of time, in 2017 alleging attempt to murder him and in 2020 alleging his murder – Respondent has criminal antecedents – There is a likelihood of him absconding or threatening the witnesses if on bail which would have a vital bearing on the trial – Present cases not fit for grant of bail to the respondent in respect of the two serious accusations against him* vis-a-vis *the very same person – High Court lost sight of the vital aspects of the case and granted bail by very cryptic orders – Impugned orders set aside – Respondent to surrender – Arms Act – ss.25, 27 – Maxims –* cessante ratione legis cessat ipsa lex.

Bail – Grant of – Factors to be considered – Discussed.

Bail – Order of – Recording of reasons – Held: While elaborating reasons may not be assigned for grant of bail, at the same time an order de hors *reasoning or bereft of relevant reasons cannot result in grant of bail – It would be only a non speaking order which is an instance of violation of principles of natural justice – In such a case the prosecution or the informant has a right to assail the order before a higher forum – Principles of natural justice.*

Gudikanti Narsimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh **(1978) 1 SCC 240 : [1978] 2 SCR 371;** *Prahlad Singh Bhati vs. NCT of Delhi & ORS* **(2001) 4 SCC 280 : [2001] 2 SCR 684;** *Ram Govind Upadhyay vs. Sudarshan Singh* **(2002) 3 SCC 598 : [2002] 2 SCR 526;** *Kalyan Chandra Sarkar*

vs. Rajesh Ranjan alias Pappu Yadav & Anr. **(2004) 7 SCC 528 : [2004] 7 SCC 528;** *Gobarbhai Naranbhai Singala vs. State of Gujarat & Ors. etc. etc*. **(2008) 3 SCC 775 : [2008] 2 SCR 131;** *Panchanan Mishra vs. Digambar Mishra* **(2005) 3 SCC 143 : [2005] 1 SCR 484;** *State of UP vs. Amarmani Tripathi* **(2005) 8 SCC 21 : [2005] 3 Suppl. SCR 454;** *Ash Mohammad vs. Shiv Raj Singh @ Lalla Bahu & Anr.* **(2012) 9 SCC 446 : [2012] 7 SCR 584;** *Neeru Yadav vs. State of UP & Anr.* **(2016) 15 SCC 422 : [2015] 10 SCR 802;** *Anil Kumar Yadav v. State (NCT of Delhi)* **(2018) 12 SCC 129 : [2017] 11 SCR 195;** *Bhoopindra Singh vs. State of Rajasthan & Anr.* **Cr.A. 1279 of 2021;** *Mahipal vs. Rajesh Kumar* **(2020) 2 SCC 118 : [2019] 14 SCR 529;** *Kranti Associates Private Limited & Anr. Vs. Masood Ahmed Khan & Ors.* **(2010) 9 SCC 496 : [2010] 10 SCR 1070 – relied on.**

Case Law Reference

[1978] 2 SCR 371	**relied on**	**Para 17**
[2001] 2 SCR 684	**relied on**	**Para 21**
[2002] 2 SCR 526	**relied on**	**Para 21**
[2004] 7 SCC 528	**relied on**	**Para 21**
[2008] 2 SCR 131	**relied on**	**Para 21**
[2005] 1 SCR 484	**relied on**	**Para 21**
[2005] 3 Suppl. SCR 454	**relied on**	**Para 21**
[2012] 7 SCR 584	**relied on**	**Para 21**
[2015] 10 SCR 802	**relied on**	**Para 21**
[2017] 11 SCR 195	**relied on**	**Para 21**
Cr.A. 1279 of 2021	**relied on**	**Para 21**
[2019] 14 SCR 529	**relied on**	**Para 21**
[2010] 10 SCR 1070	**relied on**	**Para 22**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1663 of 2021. A

From the Judgment and Order dated 22.07.2021 of the High Court of Judicature at Patna in Criminal Miscellaneous No.11683 of 2021.

With

B

Criminal Appeal No.1664 of 2021.

Smarhar Singh, Ms. Shweta Kumari, Nagendra Sharma, Ramakant Kumar, Advs. for the Appellant.

R. Basant, Sr. Adv., Yogesh Ahirraj, Ajit Pravin Wagh, Ms. Astha Prasad, A. Karthik, Arsh Khan, Saket Singh, Ms. Niranjana Singh, Manish Kumar, Advs. for the Respondents. C

The Order of the Court was passed by

NAGARATHNA J.

Leave granted. D

2. These appeals have been preferred by the informant - appellant assailing the orders dated 22.07.2021 and 13.09.2021 passed by the High Court of Judicature at Patna in Criminal Miscellaneous Nos.11683 of 2021 and 26463 of 2021 respectively whereby bail has been granted to the accused who is the common respondent in the appeals, in connection with Naubatpur P.S. Case No.93 of 2020 and Parsa Bazar P.S. Case No.316 of 2017 respectively. E

3. The facts in a nutshell are that the appellant is the mother of the deceased Rupesh Kumar. She is stated to be an eyewitness to the killing of her son and also the person who lodged the First Information Report being FIR No.93 of 2020 for offence of murder of her son under section 302 read with section 34 of the Indian Penal Code (for short, the 'IPC') and section 27 of the Arms Act against common respondent-accused herein viz., Pappu Kumar and one other person named Deepak Kumar. F

4. That FIR No.93/2020 dated 19.02.2020 is stated to have been filed by the appellant herein between 2.30 hrs and 3.00 hrs in the night stating that her son Rupesh Kumar aged about 35 years was sleeping in the room constructed on the roof top of her house. A relative, Deepak Kumar was also sleeping there. She was sleeping in another room which G H

A is beside the aforesaid room. She has further stated that she heard the sound of a person walking and also talking and then she saw that respondent–accused was present and he had a pistol in his hand and when he saw her, he caught her and forcefully tied her mouth with his Gamchha (towel) and he shot her son on the head from his pistol in front of her and Deepak Kumar too shot once at her son's head. As a result, her son died. Other family members reached the spot upon hearing the firing sound. But the accused ran away waiving their pistols.

5. Earlier, FIR No.316 of 2017 was lodged at Police Station Parsa Bazar by appellant's deceased son himself viz., Rupesh Kumar for causing serious bullet injury to him, under sections 341, 307 read with section 34 of IPC and section 27 of the Arms Act, by giving a *ferdbeyan* against the very same respondent-accused herein and his two acquaintances to K.K. Verma, ASI, Shashtri Nagar PS, District Patna, on 28.12.2017 at 7.57 pm at Emergency Ward, Paras Hospital, Patna. This *ferdbeyan* was given in respect of an incident which occurred on the previous day i.e. 27.12.2017 when he had gone to meet his friend Shailendra at Sipara. While Rupesh Kumar was returning from his friend's house, the respondent-accused along with his two acquaintances caught him and respondent-accused fired and caused bullet injury to him. When Rupesh Kumar ran and reached a farmer's house in the nearby village and narrated the entire story to him, he was taken to the police station on a motorcycle and had lodged FIR No.316/2017.

6. According to the appellant, the respondent-accused herein had attempted to kill her son viz., Rupesh Kumar in the year 2017 by firing at him and an FIR was lodged being FIR No.316 of 2017. But after lodging FIR No. 93 of 2020, the respondent-accused had absconded for about seven months. He had also threatened the appellant herein and exerted pressure on the appellant-informant and her family to withdraw the complaint, failing which he would eliminate the entire family. That a written complaint of the appellant dated 30.09.2020 was filed to the police, in pursuance of which complaint the respondent-accused was nabbed in connection with murder of Rupesh Kumar.

7. While on the run respondent-accused was arrested on 30.09.2020. The respondent-accused has been in judicial custody for a period of nine months till he was granted bail by the High Court.

8. In fact, the Court of Additional Chief Judicial Magistrate at Patna, took cognizance of the offences and issued summons to the

respondent-accused herein in connection with FIR No.316/2017. An order of remand to judicial custody was passed in connection with Naubatpur P.S. Case No.316/2017 under section 307 of IPC on 06.01.2021.

9. That the accused made an application seeking bail before the Sessions Court, which was rejected by the Additional Sessions Judge-I, Danapur by Order dated 08.12.2020. Thereafter, the respondent-accused filed an application for grant of bail by suppressing his criminal antecedents and by the impugned order dated 22.07.2021, the High Court granted him bail in connection with the case being FIR No.93/2020 registered at Naubatpur P.S. for offence under section 302 read with section 34 of IPC and section 27 of the Arms Act, subject to certain conditions.

10. Subsequently, the High Court, vide order dated 13.09.2021, also granted bail to respondent-accused in connection with the other case being FIR No.316/2017 registered at Parsa Bazar P.S. for offences under sections 341, 307 read with section 34 of IPC and section 25 of the Arms Act. Being aggrieved, the appellant has preferred these appeals before this Court.

11. We have heard Sri Smarhar Singh, learned counsel for the appellant and Sri R. Basant, learned Senior Counsel for respondent-accused and perused the material on record.

12. Learned counsel for the appellant submitted that the respondent-accused has been named in eight cases. Even though, the said accused may have been acquitted in a few cases, there are still three cases pending against him. He had attempted unsuccessfully to kill the deceased Rupesh Kumar in the year 2017. Later in the year 2020, he killed the deceased and absconded for about seven months. The mother of the deceased appellant herein, is the informant and she has been threatened by respondent. He was in judicial custody only for a period of nine months as he had earlier absconded but has now been granted bail by the High Court contrary to the settled principles of law and the judgments of this Court.

13. Further it is urged that the High Court has not assigned reasons for grant of bail in the instant cases whereas the respondent-accused is alleged to have committed heinous crimes which could result in life imprisonment or even death penalty. Respondent-accused, being a habitual offender, could not have been granted bail by the High Court. According to the learned counsel for the appellant, the High Court in a

A very cryptic order *de hors* any reasoning has granted bail to the respondent-accused. It is the submission of learned counsel for the appellant, who is mother of the deceased, to allow these appeals by setting aside the impugned orders. In support of his submission, reliance has been placed on certain decisions of this Court which shall be referred to later.

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14. Per contra, Sri Basant, learned Senior Counsel for the respondent-accused, supported the impugned orders and contended that accused no.2 in the case is the brother-in-law of the deceased and both of them were accused in another case in which the respondent-accused herein has been enlisted as a witness. The deceased and Deepak Kumar – accused no.2 were living together in the same house. He may have fired at the deceased but not the respondent-accused herein. This is a case of false implication of the respondent-accused by the informant.

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15. That the gun was recovered from accused no.2 and there has been no recovery made from respondent-accused. There have been several cases against the deceased and accused no.2 also.

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16. Learned Senior Counsel for the respondent-accused further contended that respondent-accused was 350 kms away on the intervening night of 18th and 19th February, 2020. He was not at the spot of the crime at all. This is evident from the mobile phone details. Therefore, the High Court was justified in considering these aspects and granting bail to the respondent-accused.

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17. In support of his submission, Sri Basant, learned Senior Counsel, placed reliance on ***Gudikanti Narsimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh*** **- (1978) 1 SCC 240**, which prescribes the approach of a Court while granting bail. The Court considering an application seeking bail cannot enter into an in-depth analysis of the case so as to hold a mini trial of the case. It is also unnecessary to give lengthy reasons at the time of granting bail. It was contended that bail is the norm and jail is the exception. Once bail has been granted by a Court, it is only in very rare cases that there is interference as it would have the effect of cancellation of bail. That the liberty of a person cannot be interfered with unless the situation warrants.

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18. It was further submitted that learned counsel for the appellant was not right in contending that the respondent -accused had absconded. In fact, there was no chargesheet against him. It was only when a protest

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petition was filed, that a chargesheet was filed against him and he was arrested.

19. It was further submitted that the allegations against the respondent-accused are false and hence the impugned orders of the High Court do not call for any interference in these appeals.

20. Having regard to the contention of Sri Smarhar Singh, learned counsel for the appellant that the impugned orders granting bail to the respondent-accused are bereft of any reasoning and they are cryptic and bail has been granted in a casual manner, we extract those portions of the impugned orders dated 22nd July, 2021 and 13th September, 2021 passed by the High Court, which provides the "reasoning" of the Court for granting bail, as under :

"Impugned Order dated 22.7.2021

During course of investigation, it has come that at the time and date of occurrence petitioner was at Araria. Petitioner is in custody since 30.09.2020.

Considering the facts and circumstances of the case and the fact that false implication against the petitioner cannot be rule out, the petitioner above-named, is directed to be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Chief Judicial Magistrate III, Patna in connection with Naubatpur P.S. Case No.93 of 2020, subject to following conditions:

(i) The petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by the Court and in the event of failure on two consecutive dates without sufficient reasons, his bail bond shall be liable to be cancelled by the court below.

(ii) If the petitioner tampers with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioner."

Impugned Order dated 13.09.2021

"Considering the facts and circumstances of the case and the fact petitioner is in custody since 06.01.2021, let the petitioner,

A mentioned above, be enlarged on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Sub Judge-VIII, Patna, in connection with Parza Bazar P.S. Case No. 316/2017, subject to the following conditions:

B (1) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court and shall remain physically present as directed by the Court and on his/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be cancelled by the Court below.

C (2) If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail."

21. Before proceeding further, it would be useful to refer to the judgments of this Court in the matter of granting bail to an accused as
D under:

a) In ***Gudikanti Narasimhulu*** (supra), Krishna Iyer, J., while elaborating on the content and meaning of Article 21 of the Constitution of India, has also elaborated the factors that have to be considered while granting bail which are
E extracted as under:

> "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
F upon the issue.
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> 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.
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> G 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
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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 about the criminal record of a defendant, is therefore not an exercise in irrelevance."

b) ***Prahlad Singh Bhati vs. NCT of Delhi & ORS* – (2001) 4 SCC 280** is a case wherein this Court proceeded to state the following principles which are to be considered while granting bail:

"(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."

c) This Court in ***Ram Govind Upadhyay vs. Sudarshan Singh* – (2002) 3 SCC 598,** speaking through Banerjee, J., observed as under:

"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.

A 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."

d) In ***Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav & Anr.*** **– (2004) 7 SCC 528**, this Court observed in paragraph 11 as under :

"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 and Puran v. Rambilas, (2001) 6 SCC 338."

e) ***Gobarbhai Naranbhai Singala vs. State of Gujarat & Ors. etc. etc.* – (2008) 3 SCC 775,** is a case which concerns cancellation of bail by this Court in a petition filed under Article 136 of the Constitution of India. In the said case reliance was placed on ***Panchanan Mishra vs. Digambar Mishra* – (2005) 3 SCC 143** wherein in para 13 it was observed as under:

> "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."

Further on referring to the ***State of UP vs. Amarmani Tripathi* – (2005) 8 SCC 21**, this Court noted the facts of the case therein to the effect that the respondent therein had been named in ten other criminal cases in the last 25 years or so, out of which five cases were under section 307 IPC for attempt to murder and another under section 302 IPC for committing murder. That in most of the cases he was acquitted for want of sufficient evidence. Without saying anything further this Court noted that the High Court in the said case completely ignored the general principle for grant of bail in a heinous crime of commission of murder in which the sentence, if convicted, is death or life imprisonment.

It was further observed that in the impugned order therein the findings recorded touched upon the merits of the case and the learned Judge had proceeded as if an order of acquittal was being passed, contrary to what had been said in ***Amarmani Tripathi*** which is that only a brief examination has to be made to satisfy about the facts and circumstances or a prima facie case.

f) This Court in ***Ash Mohammad vs. Shiv Raj Singh @ Lalla Bahu & Anr. – (2012) 9 SCC 446***, observed that though the period of custody is a relevant factor, the same has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents. That these are to be weighed in the scale of collective cry and desire and that societal concern has to be kept in view in juxtaposition to individual liberty, was underlined.

g) In ***Neeru Yadav vs. State of UP & Anr.* – (2016) 15 SCC 422,** after referring to a catena of judgments of this Court on the consideration of factors for grant of bail observed through Dipak Misra, J. (as His Lordship then was) in paragraphs 15 and 18 as under:

> "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 lightening 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.
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> 18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order."

h) In ***Anil Kumar Yadav v. State (NCT of Delhi)*** **– (2018) 12 SCC 129**, this Court has spelt out some of the significant considerations which must be placed in the balance in deciding whether to grant bail:

> "17. While granting bail, the relevant considerations are: (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court."

i) Recently in ***Bhoopindra Singh vs. State of Rajasthan & Anr.*** **(Criminal Appeal No. 1279 of 2021),** this Court has observed as under in the matter of exercise of an appellate power to determine whether bail has been granted for valid reasons as distinct from an application for cancellation of bail by quoting ***Mahipal vs. Rajesh Kumar*****-(2020) 2 SCC 118**:

> "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."

22. On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasi-judicial authority, it

would be useful to refer to a judgment of this Court in ***Kranti Associates Private Limited & Anr. vs. Masood Ahmed Khan & Ors.* – (2010) 9 SCC 496**, wherein after referring to a number of judgments this Court summarised at paragraph 47 the law on the point. The relevant principles for the purpose of this case are extracted as under:

(a) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(b) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(c) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(d) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(e) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(f) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(g) Insistence on reason is a requirement for both judicial accountability and transparency.

(h) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(i) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(j) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* [(1987) 100 Harvard Law Review 731-37)

(k) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

23. Though the aforesaid judgment was rendered in the context of a dismissal of a revision petition by a cryptic order by the National Consumer Disputes Redressal Commission, reliance could be placed on the said judgment on the need to give reasons while deciding a matter.

24. The Latin maxim "*cessante ratione legis cessat ipsa lex*" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself", is also apposite.

25. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a *prima facie* conclusion. While considering an application for grant of bail a *prima facie* conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence/s alleged against an accused.

A 26. We have extracted the relevant portions of the impugned orders above. At the outset, we observe that the extracted portions are the only portions forming part of the "reasoning" of the High court while granting bail. As noted from the aforecited judgments, it is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the B accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. At the same time, a balance would have to be struck between the nature of the allegations made C against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused. D

27. Ultimately, the Court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other. E

28. Thus, while elaborating reasons may not be assigned for grant of bail, at the same time an order *de hors* reasoning or bereft of the relevant reasons cannot result in grant of bail. It would be only a non speaking order which is an instance of violation of principles of natural justice. In such a case the prosecution or the informant has a right to assail the order before a higher forum. F

29. In view of the aforesaid discussion, we shall now consider the facts of the present case. The allegations against respondent-accused as well as the contentions raised at the Bar have been narrated in detail above. On a consideration of the same, the following aspects of the case would emerge: G

a) Allegations against the respondent-accused are under Sections 341, 307 read with Section 34 of the IPC and Section 27 of the Arms Act in respect of FIR No. 316 of 2017 lodged at Police Station Parsa Bazar which is with

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regard to attempt to murder Rupesh Kumar the injured, who had himself given the *Ferdbayan* against the respondent - accused herein. The other case, namely, FIR No. 93 of 2020 is with regard to the offence of murder of appellant's son Rupesh Kumar under Section 302 read with Section 34 of the IPC and Section 27 of the Arms Act against respondent-accused herein and accused no.2 Deepak Kumar. Thus, offences alleged against respondent-accused herein are serious offences vis-a-vis the very same Rupesh Kumar at two points of time, namely, in 2017 when attempt to murder him is alleged and in 2020 allegation of murder has been cast by the appellant, mother of the deceased who is stated to be an eyewitness. Thus, the allegations against the respondent - accused vis-a-vis the same person, namely, the informant Rupesh Kumar in both the cases.

b) According to the respondent-accused, there has been a history of enmity between the accused and the deceased.

c) The accusation against the respondent-accused is that he shot Rupesh Kumar with a fire arm, namely, a pistol on two occasions.

d) The respondent-accused herein has been named in about eight cases and though he may have been acquitted in a few of them, there are still cases pending against him. Thus, it is inferred that respondent-accused has criminal antecedents.

e) It has also come on record that the respondent - accused had absconded for a period of seven months after the complaint in respect of the second offence was lodged against him. Therefore, his arrest was delayed.

f) It is also the case of the appellant that the respondent-accused had threatened the informant mother of the deceased.

g) Thus, there is a likelihood of the respondent-accused absconding or threatening the witnesses if on bail which would have a vital bearing on the trial of the cases.

A h) Also, for securing the respondent-accused herein for the purpose of commencement of the trial in right earnest in both the cases, as the accused had earlier absconded, discretion could not have been exercised in favour of the respondent-accused in the instant cases.

B i) In the impugned order dated 13.09.2021, the High Court has noted that there was a previous enmity between the deceased and the petitioner with regard to contesting an Election as Mukhiya of Chhotki Tangraila Gram Panchayat but this fact has not been taken into consideration in the context of the allegation against the accused and with regard to grant of bail.

C

30. Having considered the aforesaid facts of the present case in juxtaposition with the judgments referred to above, we do not think that these cases are fit cases for grant of bail to respondent-accused in respect of the two serious accusations against him vis-à-vis the very same person namely deceased Rupesh Kumar.

D

31. The High court has lost sight of the aforesaid vital aspects of the case and in very cryptic orders has granted bail to the respondent-accused. For the aforesaid reasons, we find that the High Court was not right in allowing the applications for bail filed by the respondent-accused. Hence, the impugned orders passed by the High Court are set aside. The appeals are allowed.

E

32. The respondent-accused is on bail. His bail bonds stand cancelled and he is directed to surrender before the concerned jail authorities within a period of two weeks from today.

Divya Pandey Appeals allowed.