A BHOOPENDRA SINGH

v.

THE STATE OF RAJASTHAN

(Criminal Appeal No. 1279 of 2021)

B OCTOBER 29, 2021

[DR. DHANANJAYA Y CHANDRACHUD AND B. V. NAGARATHNA, JJ.]

Bail: Grant of – Correctness of – On facts, 60 year old women accused of murder of village sarpanch – Case of previous enimity between accused and the victim – Four previous bail application rejected – Fifth bail application granted by the High Court – Sustainability of – Held: Not sustainable – High Court failed to notice relevant circumstances bearing on the seriousness and gravity of the crime and the specific role attributed to the accused – High Court proceeded on the erroneous basis that no specific or overt act attributed to the accused – Also, there was no change in circumstances warranting the grant of bail – Thus, the order of the High Court set aside.

C

D

Allowing the appeal, the Court

E

HELD: 1.1 The impugned order granting bail is unsustainable. The High Court failed to notice relevant circumstances bearing on the seriousness and gravity of the crime and the role attributed to the second respondent. The High Court has proceeded on the erroneous basis that no specific or overt act has been assigned to the second respondent. There was no change in circumstances warranting the grant of bail. The impugned judgment and order of the Single Judge of the High Court is set aside and the application for bail filed by the second respondent is rejected. [Para 19, 20][199-B-D]

F

G **1.2 The final report under Section 173 of the CrPC indicates that the investigation has revealed that the second respondent was using as many as four sim cards and was in touch with one of the sharp-shooters who was hired to commit the crime; and that she was the custodian of the weapons which were stored at the**

H

rental premises where she resided. The charge-sheet contains an analysis of the call data records. Apart from the material drawn from the call data records, it has been found during the course of the investigation that in order to purchase the fire arms for the crime, the husband of the second respondent, had paid an advance of Rs. 40,000 to P, who had brought three katas and ten cartridges. The weapons were kept in a room by AS in which the second respondent was residing on a rental basis. Moreover, there is a specific allegation that the second respondent has actively aided the commission of the crime by furnishing information about the movements of the deceased to the killers. As regards the co-accused, it has been submitted that during the course of the investigation he was not found to be present at the scene of the offence and was not charge-sheeted. [Para 12, 15][194-C-D; 196-C-E]

1.3 The deceased was due to testify in the trial in the prior case under s. 307 of the IPC and the murder was committed barely a fortnight prior to the date on which he was to depose. The High Court had rejected four previous bail applications. There was no change in circumstances. In this backdrop, the High Court having failed to notice material circumstances bearing upon the grant of bail to the second respondent and, having proceeded on a palpable erroneous basis, a case for the setting aside of the order of the High Court has been duly established. [Para 16][196-F-H]

Anil Kumar yadav v State(NCT of Delhi) **(2018) 12 SCC 129;** *Mahipal v Rajesh Kumar* **(2020) 2 SCC 118;** R*amesh Bhavan Rathod v Vishanbhai Hirabhai Makwana Koli* **(2021) 6 SCC 230;** *Harjit Singh v Inderpreet Singh* **2021 SCC OnLine SC 633 - referred to.**

Case Law Reference

(2018) 12 SCC 129	**referred to**	**Para 11**
(2020) 2 SCC 118	**referred to**	**Para 17**
(2021) 6 SCC 230	**referred to**	**Para 18**

A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1279 of 2021.

From the Judgment and Order dated 11.08.2021 of the High Court of Judicature for Rajasthan, Bench at Jaipur in S.B. Criminal Miscellaneous Vth Bail Application No.11627 of 2021.

B Namit Saxena, Awnish Maithani, Ms. Arushi Dhawan, Advs. for the Appellant.

Vivek Sood, Sr. Adv., Ms. Ritika Jhurani, Milind Kumar, Abhishek Sharma, Akshat Aggarwal, Ashish Pandey, Brijender Singh Dhull, Dr. Pooja Jha, Ms. Nandita Jha, Vishwa Pal Singh, Advs. for the C Respondents.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. This appeal arises from a judgment dated 11 August 2021 of a Single Judge at the Jaipur Bench of the High Court of Judicature for D Rajasthan. By the judgment impugned in the appeal, the High Court has allowed the fifth bail application of the second respondent.

2. FIR No. 732 of 2017 was registered at Police Station Mathuraghat for offences punishable under Sections 147, 148, 149, 323, 341, 307, 302 and 336 of the Indian Penal Code 1860[1]. While allowing the application for bail, the Single Judge has observed: E

> "6. Taking note of the fact that petitioner has remained in custody fora period of three years and ten months, she is a female, no overt act is assigned to her in the present case, co-accused Vijay Palagainst whom there was allegation has been given benefit of bail,after rejection of fourth bail application by this Court, there F isvariance in prosecution story, earlier the presence of accused wass[h]own at the tea shop and later on presence of accused accordingto witness is shown at the place of occurrence and conclusion oftrial will take time, hence, I deem it proper to allow the fifth bail application."

G 3. The appellant is the son of the deceased-Daansingh- who was the Sarpanch of the village. It has been alleged that there was a prior enmity between the accused and the deceased, as a consequence of which the husband of the second respondent together with certain other members of his family and sharp shootersshot at Daansingh in September

H [1] "IPC"

2015. Daansingh survived the incident. FIR No. 466 of 2015 under Section 307 of the IPC was registered at Police Station Kumher. The second respondent was arrested and charge-sheeted. The evidence of Daansingh was to be recorded at the criminal trial. A fortnight prior to the recording of his evidence, Daansinghwas murdered on 11 September 2017.

4. On 12 September 2017, FIR No. 732 of 2017 was registered at Police Station Mathuraghat by the brother of the appellant for offences punishable under Sections 147, 148, 149, 323, 341, 307, 302 and 336 of the IPC and Sections 3/25 and 4/25 of the Arms Act 1959. The second respondent was arrested on 3 October 2017. After investigation, the final report under Section 173 of the Code of Criminal Procedure Code 1973[2] was submitted on 28 December 2017 in which the second respondent has been named as an accused.

5. The second respondent was denied bail by the High Court on 6 April 2018, 5 September 2019 and 8 September 2020. In its order dated 5 September 2019, the High Court noted:

> "5. […] I.O. is present in person in the Court, who has produced the calls details. It is informed by Investigating Officer that two mobiles were recovered from the petitioner and from I.M.E.I. number, it is revealed that different sims were used in these mobiles and two sims that was used, petitioner was in contact with Prahlad and her son Anek Singh, who is also accused in this case. It is also informed that day prior to the incident, petitioner and one Bhuria came to the office of A.S.I and threatened to murder Dansingh. It is also informed that petitioner informed the shooter about movement of the deceased and she was constantly in touch with Prahlad and her son-Anek Singh."

6. By its order dated 8 September 2020, the High Court,while dismissingthe fourth bail application, also observed that the second respondent was not co-operating in the investigation.

7. The High Court has allowed the fifth application for bail of the second respondent observing that

(i) The second respondent is a woman;

(ii) She has been in custody for three years and ten months;

[2] "CrPC"

A (iii) No overt act was assigned to her in the present case;

(iv) Co-accused Vijaypal has been granted bail;

(v) There is a variance in the story of the prosecution in respect of the location of the second respondent; and

B (vi) The conclusion of the trial is likely to take time.

8. Mr Namit Saxena, counsel appearing on behalf of the appellant submitted that:

(i) The High Court is in error in proceeding on the basis that no overt act is attributed to the second respondent since the charge-sheet, which has been submitted after investigation, indicates that

C

a. The second respondent was using as many as four sim cards and was in constant contact with Prahlad,the co-accused who was hired as a sharp shooter, and her son Anek, who is also a co-accused; and

D

b. The second respondent was the custodian of the weapons used in the crime;

E (ii) The High Court had in its order dated 8 September 2020 specifically noted that the second respondent was not co-operating in the investigation of the case;

(iii) Four earlier bail applications have been rejected and there wasno change in the circumstances to warrant the grant of bail;

F

(iv) No parity could be claimed with the co-accusedVijaypal since he has not been charge-sheeted;

(v) The investigation has revealed that the deceased was murdered with the aid of a hired sharp-shooter shortly before he was to depose at the criminal trial in the case arising out of FIR No. 466 of 2015 under Section 307 of the IPC;

G

(vi) The second respondent, as the prosecution alleges, was following the car of the deceased and was providing instructions about his location to the sharp-shooter; and

H

(vii) Even the brother of the appellant, Gopal Singh,was assaulted shortly before his testimony was to be recorded.

9. On the other hand, Mr Vivek Sood, senior counsel appearing on behalf of the second respondent submitted that:

(i) The incident took place outside the house of the deceased in which event, the role attributed to the second respondent is rendered meaningless;

(ii) There has been a clear over-implication of members of the family in the FIR since as many as six persons are alleged to have shot at the deceased whereas only two bullets were recovered;

(iii) Two of the persons named in the FIR have not been charge-sheeted;

(iv) The second respondent is sixty years old and was released on bail after being in custody for three years and ten months;

(v) 28 out of 58 witnesses have been examined and the trial is likely to take some time; and

(vi) Anek Singh with whom the second respondent is alleged to have been in contact is her son, while Prahlad, the alleged sharp-shooter, is a relative and hence there would be nothing untoward in the mobile contact.

10. Ms Ritika Jhurani, counsel appearing on behalf of the State of Rajasthan submitted that:

(i) The High Court has not considered the gravity of the crime while granting bail to the second respondent;

(ii) No parity could have been claimed with co-accused Vijaypal who was granted bail since he was not found to be involved in the incident and was not charge-sheeted; and

(iii) On the other hand, the second respondent was found to be directly involved in the conspiracy of a pre-meditated murder.

---

[3] (2018) 12 SCC 129

A 11. In **Anil Kumar Yadav** v. **State (NCT of Delhi)**[3],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
B 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.
C The matter always calls for judicious exercise of discretion by the Court."

12. While granting bail in the present case, the High Court has observed that "no overt act is assigned to her (the second respondent) in the present case". These observations are erroneous.The final report
D under Section 173 of the CrPC indicates that the investigation has revealed that :

(i) The second respondent was using as many as four sim cards and was in touch with one of the sharp-shooters who was hired to commit the crime; and

E (ii) She was the custodian of the weapons which were stored at the rental premises where she resided.

13. On the first aspect, the charge-sheet contains the following details in regard to the use of the mobile numbers of the second respondent:

F "From them analysis of these Call Details, following facts have come to light:

1. Mobile Number: [xxxxxxxx00] (Omvati): - The Call details ofthis Mobile Number were procured from date 01.08.2017 onwards until the date of occurrence of the case incident and
G found that said number was active until the date 09.09.2017 after the aforesaid date of 01.08.2017 and its corresponding IMEI Number was found to be [xxxxxxxxxxxx810]. It has also come to light that after said date 09.09.2017, in said mobile phone of IMEI: [xxxxxxxxxxxx810], some other SIM was found to be active or not to find out the same, the Call Details corresponding to said
H IMEINo. [xxxxxxxxxxxx810]was obtained for Mobile Number

[xxxxxxxx36] in the course of which it came to be known that said Mobile Number was active until the date of incident 11.09.2017.

2. Mobile Number [xxxxxxxx36] (Omvati): - Mobile Number [xxxxxxxx36] related SIM Card was found to have been issued in the name of Guddi wife of Shri Lalsingh, R/o; Sabaura, District: Bharatpur, Omvati has used the Mobile Phone of IMEI No: [xxxxxxxxxxxx810]in the past for making and receiving calls to and from Mobile No: [xxxxxxxx00] and then from the same mobile later also operated Mobile Number [xxxxxxxx36] which clearly indicates that said Mobile has been used by Omvati only and not Guddi. When the call details of Mobile Number [xxxxxxxx36] was analysed it was found that the mobile location on date 11.09.2017 as Kumher, Nagla Baghera Post Bauraayi, Anand Nagar,Bharatpur, Ranjit Nagar, Bharatpur, near Railway Station: Bharatpur and found that from said Number, she has made several calls and conversed with other Mobile Number [xxxxxxxx31]."

14. The mobile number with which the cell phone of the second respondent was in contact with is of the co-accused Prahlad, who is alleged to be a hired sharp-shooter. Apart from the above two mobile numbers, there were two other mobile numbers which were in the use by the second respondent,as indicated in the following extracts from the charge-sheet:

"7. Mobile Number: [xxxxxxxx57] (Omvati):-In the course of investigation, in this case matter, it hascome to light that Mobile No: [xxxxxxxx57] has been used in the name of one Pradeep son of Udaysingh resident of Badeeka, Tehsil Kathoomar, District: Alwar and its IMEI [xxxxxxxxxxxx960]was under consistent usage too. On the date of occurrence of the case incident i. e., 11.09.2017, the location of this number was traced as Ashok Nagar, Near: Subhash Nagar, Bharatpur, Nagal Ganga, Tehsil: Kumher, Kumher, Rarah. Said IMEI based CDR was obtained fro[m] which it was found that [xxxxxxxx89] was an active number and was found to be under the usage of Omvati.

8. Mobile Number [xxxxxxxx89] (Omvati):- this Mobile Number [xxxxxxxx89] was found to have been issued in the name of Omvati – wife of Ratansingh – resident of Sabaura, Police Station: Kumher, Bharatpur and on analysing the CDR of said number it

A was found to have been used in an instruments or instrument of IMEI Numbers [xxxxxxxxxxxx970] and [xxxxxxxxxxxx960]. When the CDR of IMEI No. [xxxxxxxxxxxx960]was procured, it was found that Mobile Number [xxxxxxxx57] related SIM card has been used in it. In this way, it has become apparent that said Mobile No: [xxxxxxxx57] was used by Omvati wife of Ratansingh, resident ofSabaura, Kumher, Bharatpur and the aforesaid IMEIs [xxxxxxxxxxxx970] & [xxxxxxxxxxxx960] were used from a single Mobile Handset by her. On 11.09.2017 – i. e. the date of occurrence of this case incident, its location was traced as AshokVihar, Subhash Nagar, Bharatpur, Kumher, Ranjeet Nagar, Bharatpur, Near Railway Station Bharatpur etc."

15. The charge-sheet contains an analysis of the call data records. Apart from the material drawn from the call data records, it has been found during the course of the investigation that in order to purchase the fire arms for the crime, Ratan Singh, the husband of the second respondent, had paid an advance of Rs. 40,000 to Prahlad. Prahlad had brought three katas and ten cartridges. The weapons were kept in a room by Anek Singhat Bharatpur in which the second respondent was residing on a rental basis. Moreover, there is a specific allegation that the second respondent has actively aided the commission of the crime by furnishing information about the movements ofthe deceased (Daansingh) to the killers. There has been an evident error on the part of the High Court in surmising that no specific or overt act is attributed to the second respondent. As regards the co-accused Vijaypal, it has been submitted that during the course of the investigation he was not found to be present at the scene of the offence and was not charge-sheeted.

16. In deciding as to whether the fifth bail application of the second respondent should be allowed, the High Court has failed to consider the seriousness and gravity of the crime and the specific role which is attributed to the second respondent. The deceased was due to testify in the trial in the prior case under Section 307 of the IPC and the murder was committed barely a fortnight prior to the date on which he was to depose. The High Court had rejected four previous bail applications. There was no change in circumstances. In this backdrop, the High Court having failed to notice material circumstances bearing upon the grant of bail to the second respondent and, as noted above, having proceeded on a palpable erroneous basis, a case for the setting aside of the order of the High Court has been duly established.

17. In **Mahipal** v. **Rajesh Kumar**[4], one of us (Justice DY Chandrachud), speaking for a two-judge Bench of this Court, after adverting to the precedents on the subject, enunciated the considerations which must weigh in the determination of whether bail should be granted:

> "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;

[4] (2020) 2 SCC 118

A (*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.

B ***

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."

C […]

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* D *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* E [*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]."

18. The Court noted that the considerations whichmust weigh in F the exercise of the power of the appellate court to determine whether bail has been granted for valid reasons stand on a distinct footing from an application for cancellation of bail. The Court observed:

"16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a G 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 H 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." A

(See also in this context the judgment in **Ramesh Bhavan Rathod** v. **Vishanbhai Hirabhai Makwana Koli**[5]) and **Harjit Singh** v. **Inderpreet Singh alias Inder**[6])

19. On the touchstoneof the above decisions and for the reasons we have indicated above, the impugned order granting bail isunsustainable. The High Court has failed to notice relevant circumstances bearing on the seriousness and gravity of the crime and the role attributed to the second respondent. The High Court has proceeded on the erroneous basis that no overt act has been assigned to the second respondent. There was no change in circumstances warranting the grant of bail. B C

20. For the above reasons we allow the appeal and set aside the impugned judgment and order of the Single Judge at the Jaipur Bench of the High Court of Judicature for Rajasthan dated 11 August 2021 in SB Criminal Miscellaneous Fifth Bail Application No. 11627 of 2021. The application for bail filed by the second respondent shall consequently stand rejected.The second respondent shall surrender on or before 7 November 2021. D

21. The observations made in this judgment are only for the purpose of considering the application for bail and shall have no bearing on the merits of the case or the pending trial. E

22. Pending application(s), if any, stand disposed of.

Nidhi Jain Appeal allowed.

[5] (2021) 6 SCC 230
[6] 2021 SCC OnLine SC 633