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MAMTA & ANR

v.

THE STATE (NCT OF DELHI) & ANR

(Criminal Appeal No 878 of 2022)

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MAY 24, 2022

**[DR. DHANANJAYA Y CHANDRACHUD AND
BELA M TRIVEDI, JJ.]**

Code of Criminal Procedure, 1973: s. 439 – Bail – Grant of – Factors to be considered – Allegation of murder of young child for ransom against the second respondent – Grant of bail by the High Court – Propriety of – Held: Exercise of discretion by the High Court not proper – While granting bail, the High Court failed to take into consideration that crucial witnesses were yet to be examined, that release of the second respondent on bail, at this stage, would impede a fair trial, and that there was an apprehension that the witnesses may be tampered – Thus, the judgment and order of the Single Judge of the High Court is set aside – Issuance of direction to the trial judge to conduct the trial expeditiously.

Allowing the appeal, the Court

E **HELD:** The High Court while granting bail, failed to notice the crucial aspects which has bearing on whether or not a case for the exercise of the jurisdiction to grant bail under Section 439 of CrPC was established. Since the trial is presently underway, this Court is not entering upon a discussion of the material which has emerged during the course of the investigation, and during the course of the trial. However, an important circumstance which should have, but has not been taken into consideration by the High Court is that crucial witnesses are yet to be examined. The release of the second respondent on bail, at this stage, would run a grave risk of impeding a fair trial. The apprehension of the appellants and of the prosecution that the witnesses may be tampered with cannot be regarded as lacking in substance. Considering the nature and gravity of the offence, the role which has been attributed to the second respondent and the crucial witnesses which remain to be examined. The exercise of the discretion by the High Court is improper. Thus, the judgment

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and order of the Single Judge of the High Court is set aside. The second respondent to surrender forthwith. Since the trial is pending since 2014, the trial judge is directed to conduct the trial expeditiously. [Paras 10-12][551-G-H; 552-A-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.878 of 2022.

From the Judgment and Order dated 02.03.2022 of the High Court of Delhi at New Delhi in Bail Application No.196 of 2022.

Dr. Menaka Guruswamy, Sr. Adv., Ashwani Kumar Dubey, Yash S. Vijay, Saurabh Mishra, Utkarsh Pratap, Advs. for the Appellants.

Jayant K. Sud, ASG, Siddhartha Dave, Sr. Adv., Ms. Neela Kedar Gokhale, Sourav Singh, Mohit Kumar Singh, Sanjay Kumar Tyagi, Ms. Vishakha, Kartik Jasra, Randeep Sachdeva, Harish Nadda, Ashok Panigrahi, Gurmeet Singh Makker, Ms. Supriya Juneja, Adhishwar Suri, Rajiv Mohan, Manvendra Singh, Advs. for the Respondents.

The Judgment of the Court was delivered by :

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. This appeal arises from an order dated 2 March 2022 of a Single Judge of the High Court of Delhi in Bail Application No 196 of 2022.

3. The second respondent is facing trial in connection with FIR No 894 of 2014 dated 18 November 2014 for alleged offences punishable under Sections 363, 364A, 302 and 201 read with Section 34 of the Indian Penal Code 1860 registered at Police Station Gandhi Nagar, District East Delhi. Following the submission of the charge-sheet under Section 173 of the Code of Criminal Procedure 1973¹, charges have been framed. Eleven prosecution witnesses have been examined.

4. The appellants are the parents of the deceased, who was a 13 year old Class VIII student. The case of the prosecution is that he was kidnapped for a ransom of rupees one crore and his dead body was recovered from a *nallah*, day after the kidnapping of the child. The second respondent was arrested on 25 November 2014 and was in

¹ "CrPC"

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A custody, except for the period when he was released on interim bail, until 2 March 2022.

5. Dr Menaka Guruswamy, senior counsel appearing on behalf of the appellants, submits that:

B (i) The High Court has proceeded on a manifestly erroneous premise that PW 3 Urvashi, who deposed during the course of the trial, is an approver;

(ii) Crucial witnesses, including PW 15 (the caretaker) and PW 16 (the landlady) remain to be examined;

C (iii) The material which has emerged during the course of the investigation and the trial would militate against the grant of bail; and

(iv) The High Court has proceeded on the erroneous premise that besides the testimony of PW 3, no other witness has been cited as against the second respondent.

D 6. Mr Siddhartha Dave, senior counsel appearing on behalf of the second respondent, on the other hand, urged that:

E (i) The second respondent was in custody for over a period of six years;

(ii) Considering the fact that only eleven out of fifty five witnesses have been examined at the trial, the order granting bail does not warrant interference;

(iii) The second respondent had furnished his voice sample unlike the co-accused who had refused to do so and the report of the Forensic Science Laboratory has not been produced on the record;

F (iv) PW 3, who has turned hostile, is a witness in the nature of an accomplice since according to the prosecution, she was present at the premises where the child was brought;

G (v) The call data records do not specifically pinpoint the location of the second respondent; and

(vi) On the above grounds and having regard to the period of custody undergone, there is no valid reason for this Court to interfere with the order granting bail.

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7. The submissions which have been urged on behalf of the appellants have been supported both in the counter affidavit which has been filed by the NCT of Delhi as well as during the course of the submissions by Mr Jayant K Sud, Additional Solicitor General for the NCT of Delhi. Pertinently, it has been urged that the following material has emerged on the record: A

- (a) DNA findings implicating the second respondent;
- (b) Recovery of the motorcycle belonging to the second respondent which was used in the commission of crime;
- (c) The purchase of Alprax and Montair LC tablets from the chemist which were used for drugging the child; C
- (d) The statement of the chemist, PW 5; and
- (e) Recoveries of the I-Card, watch and school bag of the deceased.

8. The issue which arises before this Court is whether the High Court was justified in granting bail to the second respondent. The offence in the present case involves the alleged murder of a young child for ransom. The trial is proceeding though, in our view, it would be appropriate to direct that it should be completed expeditiously. D

9. The High Court has primarily granted bail on the basis that: E

- (i) The charge-sheet having been filed, the custody of the second respondent was not required for the purpose of investigation;
- (ii) PW 3 is an approver who has not supported the case of the prosecution; and F
- (iii) The case rests on circumstantial circumstance and, at this stage, there is insufficient evidence to indicate the involvement of the second respondent.

10. The High Court has, while granting bail, failed to notice crucial aspects which have a bearing on whether or not a case for the exercise of the jurisdiction to grant bail under Section 439 of CrPC was established. Since the trial is presently underway, we are not entering upon a discussion of the material which has emerged during the course of the investigation, which led to the filing of the final report under Section 173 of CrPC or, G

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- A for that matter, of the material which has emerged during the course of the trial. However, an important circumstance which should have, but has not been taken into consideration by the High Court is that crucial witnesses are yet to be examined. The release of the second respondent on bail, at this stage, would run a grave risk of impeding a fair trial. The apprehension of the appellants and of the prosecution that the witnesses may be tampered with cannot be regarded as lacking in substance
- B 11. Considering the nature and gravity of the offence, the role which has been attributed to the second respondent and the crucial witnesses which remain to be examined. The exercise of the discretion by the High Court in the present case is improper.
- C 12. The appeal is accordingly allowed and the judgment and order dated 2 March 2022 of the Single Judge of the High Court of Delhi in Bail Application No 196 of 2022 is set aside. The second respondent shall surrender forthwith. Since the trial is pending since 2014, we direct the trial Judge to conduct the trial expeditiously on a day to day basis and to conclude it, preferably within a period of one year.
- D 13. Pending application, if any, stands disposed of.

Nidhi Jain

Appeal allowed.