
(2005) 08 SC CK 0095

In the Supreme Court Of India

Case No : Criminal Appeal Nos. 1099, 1100 of 2005

Ajay Kumar Sharma

APPELLANT

Vs

State of U.P. & Others

RESPONDENT

Date of Decision : 29-08-2005

Acts Referred:

Indian Penal Code, 1860 — Section 302

Citation : (2005) 7 SCC 507

Hon'ble Judges : Y.K. Sabharwal, J;B.N. Srikrishna, J;C.K. Thakker, J

Bench : Full Bench

Advocate : Harinder Mohan Singh

Final Decision : Allowed

Judgement

1. Heard the learned counsel for the parties.
2. Leave granted.
3. The de facto complainant has filed these appeals challenging the order of the High Court dated 26-6-2003, whereby the two respondent accused involved in Case Crime No. 662 of 2002 for the offence under S.302 of the Penal Code have been directed to be released on bail.
4. The learned counsel for the appellant submits that the impugned order is cryptic and the order granting bail has been passed without even considering the contentions seriously urged before the High Court including the contention that the accused are hardened criminals and are involved in a number of cases, details of which were submitted before the High Court. The details have also been furnished to this Court.
5. Though it is correct that detailed examination of the merits of the case is not required by the courts while considering an application for bail but, at the same time, the exercise of discretion has to be based on well settled principles and in a judicious manner and not as a matter of course. This Court in Chaman Lal v.

State of U.P. (2004 (7) SCC 525: 2004 SCC (Cri) 1974: JT 2004 (6) SC 540) has laid down some of the factors, amongst others, to be taken into consideration while dealing with an application for bail. The impugned order only states that the contention of the accused is that their names and that of the deceased are not mentioned in the information given in the control room; the deceased was not taken to the hospital by his brother and about the nature of injuries.

7. At this stage, purposely, we are avoiding to make any comment on the merits of the case, lest it may prejudice the case of either of the parties when the bail applications are considered afresh by the High Court. Suffice it to say that the impugned order is wholly cryptic and has not taken into consideration the relevant circumstances.

8. Our attention has also been drawn to an order dated 23-1-2003, passed by the Sessions Judge, Ghaziabad, rejecting the bail applications, inter alia, noting therein that the accused are named in the first information report; the FIR was promptly lodged; and that the post mortem report corroborates the prosecution story. It also notices that there are two eyewitnesses, who are named in the FIR, and the pendency of as many as ten cases against the accused. For similar reasons, as given above, at this stage, we refrain from commenting on what is stated in the order of the learned Sessions Judge and we do hope that all relevant aspects would be considered by the High Court on reexamination of the bail applications.

9. Having noted as to what is noticed in the order dated 23-1-2003, as also the factum of other cases pending against the accused, we may also note that, according to the accused, they have been falsely implicated at the behest of one Rajpal Tyagi, who is presently a Minister in the State Government, because of enmity. We refrain from commenting upon the case of the accused as they would have adequate opportunity to place their case before the High Court.

10. Before remitting the bail applications for fresh decision by the High Court, it deserves to be noted that on the application (Miscellaneous Application No. 65 of 2003) filed by the accused, further proceedings in the case, aforementioned, were ordered to be stayed in terms of the order dated 11-2-2003 passed by the High Court. We have been informed that the said order is continuing; resultantly, the trial of the case in respect of an offence which took place on 27-11-2002 has not proceeded further. The stay of trial of such cases is an exception and is not to be granted as a matter of course. Even when granted, the main matter deserves to be disposed of within a reasonable period of time. Unfortunately, the stay is continuing for more than two and a half years. The High Court should also take up Miscellaneous Application No. 65 of 2003 and dispose of it expeditiously and, in any case not later than one month from the date of receipt of the copy of order of this Court.

11. Further, it may be noted that although, before us, the State Government is supporting the appellant and has contended that the impugned order deserves to

be set aside but it did not take any steps to challenge the impugned order and left it to the de facto complainant. We also do not know what steps, if any, were taken by the State Government for the early disposal of the aforesaid case where the trial was stayed.

12. At this stage, we wish to say no more. The High Court would decide the bail applications, being Criminal Miscellaneous Appeals Nos. 2916 and 3229 of 2003, as also Miscellaneous Application No. 65 of 2003 on their own merits without being influenced by the orders passed by this Court.

13. Accordingly, the impugned order is set aside and the criminal appeals are allowed with a request to the High Court to decide both the cases within one month from the date of receipt of the copy of the order of this Court.

14. The accused shall surrender forthwith.