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**(2009) 07 AHC CK 0131**  
**In the Allahabad High Court**

Kanhaiya Lal Sharma (in jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 10-07-2009

**Acts Referred:**

Constitution of India, 1950 — Article 21  
Criminal Procedure Code, 1973 (CrPC) — Section 439  
Income Tax Act, 1961 — Section 269T  
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420, 467

**Citation :** (2009) 07 AHC CK 0131

**Hon'ble Judges :** Vijay Kumar Verma, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Vijay Kumar Verma, J.—The applicant Kanhaiya Lal Sharma, who was posted as Assistant Postmaster in Head Post office Saharanpur at the relevant time, has sought his release on bail by means of this application u/s 439 of the Code of Criminal Procedure (in short "the Cr.P.C."), in case crime No. 386-C/2006, under Sections 420, 409, 467, 468, 471 & 120-B Indian Penal Code (in short "the IPC."), P.S. Sadar Bazar, Saharanpur.

2. Shorn of unnecessary details, the allegations made in the FIR lodged on 27.08.2006 at Sadar Bazar, Saharanpur by the complainant Subodh Chandra Mathur, in brief, are that on retirement from U.P. State Sugar Corporation Ltd. in the year 2003, payment of Rs. 9,00,000/- (Rupees Nine Lac) was made to the complainant towards Provident Fund and gratuity, which he invested in monthly income Scheme in Head Post Office Saharanpur, through authorized agent Prashant Tyagi, his wife Smt. Kavita Tyagi, brother Sushant Tyagi and father Pooran Chandra Tyagi. The complainant had deposited the said amount in his name as well as in the names of his sons Mudit and Shobhit and his wife Smt. Neelu Mathur. Rs. 3,00,000/- each were deposited in A/c No. 1016784 and 1016785 on 28.08.2003 in the name of complainant and his son Mudit. Thereafter, Rs. 3,00,000/- were deposited by the complainant in account No.

1020020 on 28.05.2004 in the name of his son Shobhit Mathur and wife Neelu Mathur. Interest on monthly basis on these deposits was paid to the complainant up to June 2006, but pass-books of aforesaid accounts were not given by the agent to the complainant. When no person came to make payment of interest in the month of July 2006, the complainant made inquiry from Head Post Office Saharanpur, then he came to know that entire amount of account No. 1016784 and 1016785 has been withdrawn on 03.03.2005 by Prashant Tyagi by making forged signatures of Account Holders on withdrawal form (SB-7), showing his brother Sushant Tyagi as witness and in the same manner, entire amount of account No. 1020020 was also withdrawn on 16.11.2005 by the said agent through some Jaspal Singh showing him partner. It is further alleged in the FIR that entire amount of the aforesaid accounts has been withdrawn due to collusion and conspiracy of Assistant Postmaster Kanhiya Lal Sharma and officials Amar Singh and Lokesh Kumar of Head Post Office Saharanpur.

3. I have heard argument of Sri Irfan Chaudhary Advocate appearing for the applicant and AGA for the State.

4. The main submission made by learned Counsel for the applicant was that with similar allegations some other First Information Reports were also lodged against the applicant in District Saharanpur and in the cases pertaining to those FIR, the applicant has been granted bail by another Benches of this Court in case crime Nos. 386-B.M./2006, 386-A.E./2006, 386-A.Y./2006, 386-AT/2006, 386-AO/2006, 386-5B/2007, 386-CB/2006, 386-BF/2006 and 386-CE/2006 and hence the applicant deserves bail in present case also on the basis of the principle of parity. For this submission, my attention was drawn towards certain bail orders which have been filed as Annexure-2 (Paper Nos. 22 to 25).

5. On merit, it was submitted by learned Counsel for the applicant that entire amount from the accounts mentioned in the FIR was withdrawn by the authorized agent and since no amount has been withdrawn by the applicant, hence on this ground also, he deserves bail. It was also submitted by the learned Counsel in this context that there is no material in the case diary to show that there was any conspiracy or collusion between the applicant and authorized agents, who have withdrawn the money from the accounts of the complainant and his family members.

6. Next submission made by learned Counsel for the applicant was that if the authorized agent after withdrawing the money from the accounts in question did not pay the said money to the Account Holders, then applicant and other employees of post office are not responsible for this act and only the agents can be held liable for the offences alleged to have been committed. It was also submitted in this context by the learned Counsel that no money was entrusted to the applicant by the complainant or Account Holders and hence the offence punishable u/s 406 IPC is not made out against the applicant.

7. It was also submitted by learned Counsel that the applicant is languishing in

jail since 16.03.2007 and hence on the basis of the long detention period in jail, the applicant is entitled to be released on bail, because due to delay in trial fundamental right of speedy trial envisaged in Article 21 of the Constitution is being violated.

8. The bail application was vehemently opposed by learned AGA contending that the entire money from the accounts of complainant and his family members has been withdrawn due to collusion and conspiracy of the applicant and other officials of Head Post Office Saharanpur and hence in this heinous crime, the applicant should not be released on bail, because due to the collusion and conspiracy of the applicant and other employees of Saharanpur Head Post Office, the complainant has been ruined due to withdrawal of entire money, which was invested by him in monthly Income Scheme.

9. It was also submitted by learned AGA that as per rule of the Post Offices, payment of the money exceeding Rs. 20,000/- in monthly income scheme or other schemes can be made by cheque only in the name of Account Holder, but in present case, ignoring this mandatory provision, the applicant had permitted the authorized agent to withdraw about Rs. 9,00,000/- (Rupees Nine Lac) in cash, which in itself shows that the applicant was in collusion with the agent, who had withdrawn the money by making forged signatures of Account Holders on withdrawal form (SB-7). It was also submitted by learned AGA that without active cooperation and conspiracy of the applicant and other employees of post office, the money from the account of complainant could not be withdrawn in the manner in which it was withdrawn by the agents.

10. On the matter of granting bail on the basis of the principle of parity, it was submitted by learned AGA that parity cannot be the sole ground for bail in heinous crimes.

11. Having given my thoughtful consideration to the rival submissions made by the parties counsel and after going through the entire case diary of crime No. 386-C of 2006 and other material available on record, I find force in the contention of learned AGA that in this heinous crime, the applicant does not deserve bail.

12. It is true that some other Benches of this Court have granted bail to the applicant in the cases of similar nature and some such bail orders have been filed as Annexure -2, but I entirely agree with the submission of learned AGA that parity cannot be the sole ground for bail.

13. The matter of granting bail on the ground of parity has been considered in several decisions of this Court and Hon"ble Apex Court. The Full Bench of this Court in Sunder Lal Vs. The State, did not accept this proposition, which will be evident from the following observations in para 15 of the report:

The learned Single Judge since has referred the while case for decision by the Full Bench, we called upon the learned Counsel for the applicant to argue the

case on merits. The learned Counsel only pointed out that by reasons of fact that other co-accused has been admitted to bail the applicant should also be granted bail. This argument alone would not be sufficient for admitting the applicant to bail who is involved in a triple murder case....

14. This question was again examined by the Division Bench of this Court in *Nanha Vs. State of U.P.*, where after consideration of several earlier decisions on the point including *Sunder Lal (supra)*, the Hon"ble Judges constituting the Bench gave separate opinions. Hon"ble G.D. Dubey, J. held as follows in para 24 of the reports;

...My answer to the points referred to us is that parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent bail applications when the bail application of the co-accused whose bail had been earlier rejected are allowed and co-accused is released on bail. Even then the Court has to satisfy itself that, on consideration of more material placed, further developments in the investigations or otherwise and other different considerations, there are sufficient grounds for releasing the applicant on bail. If on examination of a given case, it transpires that the case of the applicant before the Court is identically similar to the accused on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail.

Hon"ble Virendra Saran, J. held as follows in para 61 of the reports:

My answer to the points referred to is that if on examination of a given case it transpires that the case of the applicant before Court is identical, similar to the accused, on facts and circumstances, who has been bailed out, then the desirability of consistency will require that such an accused should also be released on bail (Exceptional cases as discussed above apart)....

This shows that there was no unanimity between the two Judges constituting the Bench and according to Hon"ble G.D. Dube, J. parity cannot be the sole ground for granting bail to a co-accused.

15. The Hon"ble M. Katju, J., as His Lordship then was, declined to grant bail on the ground of parity and referred the matter to larger Bench in *Chander @ Chandra v. State of U.P.* 1997 (34) ACC 311. The matter came up for consideration before a Division Bench. While deciding the said reference in *Chander @ Chandra v. State of U.P.* 1998 U.P. Cr.R. 263 the Division Bench held that:

a Judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains reasons, if the same has been passed in flagrant violation of well settled principle and ignores to take into consideration the relevant facts essential for granting bail.

16. It is further held by the Division Bench in *Chander @ Chandra v. State of U.P.*

1998 U.P. Cr.R. 263 that if bail has been granted in flagrant violation of well settled principles, the order granting bail would not be in accordance with law. Such order can never form the basis for a claim founded on parity. The following observations made by the Bench in Para 17 of the report are also worth mentioning:

The grant of bail is not a mechanical act and principle of consistency cannot be extended to repeating a wrong order. If the order granting bail to an identically placed co-accused has been passed in flagrant violation of well settled principle, it will be open to the Judge to reject the bail application of the applicant before him as no Judge is obliged to pass orders against his conscience merely to maintain consistency.

17. In this connection it will be useful to notice the observations made by the Hon"ble Apex Court, where the claim was made on the ground that a similar order had been passed by a statutory authority in favour of another person. In Chandigarh Administration and another Vs. Jagjit Singh and another, , it was held as follows in para-8 of the reports:

...if the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal and unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order.

...The illegal/unwarranted action must be corrected, if it can be done according to law-indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law-but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition.

...Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law.

18. Again in Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, , it was observed as follows in para-24 of the reports:

Article 14 proceeds on the premises that a citizen had legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such persons cannot be discriminated to deny the same benefit. The rational relationship and legal back up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously, No.

19. In SLP No. 4059 of 2000: Rakesh Kumar Pandey v. Munni Singh @ Mata Bux Singh and Anr. decided on 12.3.2001, the Hon'ble Apex Court strongly denounced the order of the High Court granting bail to the co-accused on the ground of parity in a heinous offence and while cancelling the bail granted by the High Court it observed that:

The High Court on being moved, has considered the application for bail and without bearing in mind the relevant materials on record as well as the gravity of offence released the accused-respondents on bail, since the co-accused, who had been ascribed similar role, had been granted bail earlier.

20. The Apex Court in the aforesaid law report has further observed:

Suffice it to say that for a serious charge where three murders have been committed in broad day light, the High Court has not applied its mind to the relevant materials, and merely because some of the co-accused, whom similar role has been ascribed, have been released on bail earlier, have granted bail to the present accused respondents. It is true that State normally should have moved this Court against the order in question, but at the same time the power of this Court cannot be fettered merely because the State has not moved, particularly in a case like this, where our conscience is totally shocked to see the manner in which the High Court has exercised its power for release on bail of the accused respondents. We are not expressing any opinion on the merits of the matter as it may prejudice the accused in trial. But we have no doubt in our mind that the impugned order passed by the High Court suffers from gross illegality and is an order on total non-application of mind and the judgement of this Court referred to earlier analysing the provisions of Sub-section (2) of Section 439 cannot be of any use as we are not exercising power under Sub-section (2) of Section 439 Cr.P.C.

21. In the case of Salim v. State of U.P. 2003 ALL. L. J. 625, this Court has held that parity can not be the sole ground for bail.

22. Again in the case of Zubair v. State of U.P. 2005(52) ACC 205, this Court observed that there is no absolute hidebound rule that bail must necessarily be granted to the co-accused, where another co-accused has been granted bail.

23. The matter of granting bail on the principle of parity was considered by this Court in Satyendra Singh v. State of U.P. 1996 A. Cr. R.867 also. The following observations made in para 16 of the report at page 871 are worth mentioning:

The orders granting, refusing or cancelling bail are orders of interlocutory nature. It is true that discretion in passing interim orders should be exercised judicially but rule of parity is not applicable in all the cases, where one or more accused have been granted bail or similar role has been assigned inasmuch as bail is granted on the totality of facts and circumstances of a case. Parity can not be a sole ground and is one of the grounds for consideration of the question of bail. Some of the circumstances have been enumerated in the Supreme Court

Decision in Gur Charan Singh v. State (Delhi Administration) AIR 1978 SC 179.

24. Although the Hon'ble Apex Court has granted bail recently on the ground of parity in Izharul Haq Abdul Hamid Shaikh and Another Vs. State of Gujarat, , but this case can not be said to be the authority to hold that parity is a sole ground for granting bail. It is nowhere held as a binding precedent in this case that if bail has been granted by a Bench to any accused, then another Bench is also bound to grant bail to other similarly placed accused. Otherwise also a judgement of the Court is only an authority for what it actually decides and not what logically follows from it and judgement of the Court is not to be read mechanically as a Euclid's Theorem nor as if it was a statute. See (1) Quinn v. Leathern 1901 AC 495; (2) Ambalal Manibhai Patel Vs. State of Gujarat, ; (3) Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, ; (4) Bharat Petroleum Corporation Ltd. and Anr. v. N.R. Vairamani and Anr. AIR 2004 SC 4778 (5) Sarva Shramik Sanghatana (K.V), Mumbai Vs. State of Maharashtra and Others, ; (6) Government of Karnataka and Ors. v. Gowramma and Ors. AIR 2008 SC 863.

25. In view of the observations made in aforesaid decisions, I am of the considered opinion that merely on the basis of the principle of parity, the applicant cannot be released on bail in present case of heinous nature.

26. Coming to the merit of the case, it is not disputed that the applicant Kanhaiya Lal Sharma was posted as Assistant Postmaster in Head Post Office Saharanpur on the dates, on which the money from the accounts in question was withdrawn by the agents. From the statements of the complainant and other witnesses recorded by the investigating officer during investigation, this fact is prima facie established that withdrawal form (SB-7) through which the amounts in question were drawn do not bear the signature of Account Holders and by making forged signatures on withdrawal forms, the money was withdrawn in cash by the agent Prashant Tyagi. It is not the case of applicant in the bail application that the withdrawal forms (SB-7), through which the amounts in question were withdrawn, bear the signatures of Account Holders. Those withdrawal forms (SB-7) were passed and approved by the applicant in the capacity of Assistant Postmaster. The payment of entire money was made to the agent on the basis of the endorsement of approval made to the applicant on withdrawal forms. It is not disputed that about Rs. 9,00,000/- were paid in cash. Letter No. 5-20/UP06/2000-INV dated 29.8.2001, issued by the Director General Post Offices, provides that payment from Monthly Income Scheme (MIS) account either byway of premature or final closure or of monthly interest if it is Rs. 20,000/- or more should be paid by cheque only by the post offices as provided in Section 269-T of the Income Tax Act. In present case, the direction issued by the Director General Post Offices was totally ignored by the applicant, as payment of about nine lac rupees was permitted to be made by him in cash to the agent. Granting permission to withdraw rupees more than 20,000/- in cash by the applicant is prima facie proof of his involvement in the collusion and conspiracy with the agents to withdraw the money from the accounts of the

complainant and his family members. Had the payment of money from the accounts of the complainant and his family members was made through cheques, as provided in aforesaid letter issued by Director General Post Offices, then the complainant would have been saved from being ruined. Payment of entire money from account No. 1020020, which was in the name of Smt. Neelu Mathur and Sobhit, was permitted to be made to one Jaspal Singh without summoning the Account Holders to verify whether Jaspal Singh is their partner or not. No consent of Account Holders was taken by the applicant to pay the money to Jaspal Singh, a third person not connected with account No. 1020020. It is very unfortunate that the applicant Kanhaiya Lal Sharma, who was holding responsible post of Assistant Postmaster in the Head Post Office Saharanpur and who is supposed to know the relevant rules about withdrawal of money from Monthly Income Scheme or other Scheme of post offices, permitted the agent Prashant Tyagi to withdraw about Rs. 9,00,000/- in cash in utter disregard of the directions issued by Director General of Post Offices as mentioned herein-above. The applicant has not only caused irreparable loss to the complainant, but he has caused great damage to the institution in which he was working. People deposit their money in Banks and Post Offices in the hope to increase their capital and for security purpose also. It appears that the applicant with the help of other employees of Head Post Office Saharanpur was operating a racket, as some other first information reports also have been lodged in such matters against the applicant. Innocent investors have been deprived of their whole life earning by the accused persons. If the persons like Kanhaiya Lal Sharma (applicant) are allowed to be released on bail in such crimes, then the people would be reluctant to deposit their money in Post Offices, which would cause great damage to the institution. Therefore, having regard to all these facts, but without expressing any opinion on merit of the case, in this heinous crime, the applicant does not deserve bail.

27. In my considered opinion, on the basis of the long incarceration in jail also, the applicant can not be admitted to bail in this heinous crime. In this context, reference may be made to the case of Pramod Kumar Saxena v. Union of India and Ors. 2008 (63) ACC 115, in which the Hon"ble Apex Court has held that mere long period of incarceration in jail would not be per-se illegal. If the accused has committed offence, he has to remain behind bars. Such detention in jail even as an under trial prisoner would not be violative of Article 21 of the Constitution.

28. Consequently, the bail application of the applicant Kanhaiya Lal Sharma is hereby rejected.

29. The trial court concerned is directed to conclude the trial of the applicant and other accused persons within six months making sincere efforts and avoiding unnecessary adjournments.

30. SSP Saharanpur also is directed to depute special messenger to procure the attendance of the witnesses after obtaining their summons from the court

concerned.

31. Before parting with this order, I would like to point out that whatever observations have been made herein- above by me are for the purpose of disposal of this bail application only. The trial court would be at liberty to take its own view on all the matters and will not be guided by the observations made by me in this order.

32. The office is directed to send a copy of this order within a week to the trial court and SSP concerned for necessary action.