
(2021) 11 SHI CK 0041

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1571 Of 2021

Naveen Dahiya

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 174A, 201, 302, 307, 323, 341, 365, 392, 397, 411, 427, 506
Arms Act, 1959 — Section 25, 27
Code Of Criminal Procedure, 1973 — Section 154, 439
Evidence Act, 1872 — Section 27

Citation : (2021) 11 SHI CK 0041

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : N.S. Chandel, Rajesh Kumar, Kunal Thakur, Ramesh Chand

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Bail petitioner is one of the three accused persons in FIR No.215/2017 dated 07.8.2017 registered at Police Station Sadar District Solan, H.P. under Sections 302, 392, 201 & 34 of the Indian Penal Code and Sections 25 & 27 of the Arms Act.

2 Prosecution case in brief is that:-

2(i) On 7.8.2017, an information was received at Police Station Sadar, District Solan about a firing incident. Whereafter the police personnel reached the spot and found a person lying dead. One Lal Chand Sharma present on the spot got recorded his statement under Section 154 of the Code of Criminal Procedure. The gist of his statement was that:-

On 7.8.2017 at around 7.45 p.m, while stepping out from an Auto near 'Sood Karyana' shop, he heard a loud explosive kind of sound. On going a little further,

he noticed an altercation going on between a motor-cyclist and a driver of the Swift car standing alongside. The motor-cyclist was banging the head of car driver against the car window. He identified the motor-cyclist as 'Lucky'. It appeared to him that Lucky had bent forward after the loud sound and was trying to run away. Thereafter another man got down from the rear left window of the car. He caught Lucky from his hair and shot him on his head as well as on his chest and back.

Lucky fell down on the road. This incident was also witnessed by an Auto driver coming from the opposite side. The occupants of the vehicle thereafter fled from the place.

2(ii) Police carried out investigations in the matter. The dead person was identified as Pankaj alias Lucky. Three bullet injury marks were found on his body. Three empty cartridges were also recovered from the spot. Blood samples were collected from the spot. Bullet Motor-cycle No.HP 64- A -2699 was also found at the spot. The postmortem report described following injuries on the body of deceased Pankaj alias Lucky:-

"(1) A wound present on the left temporal bone 1.4 X 1.5 cm, 11.8 cm from above the head 2.5 cm from the upper end of left ear measuring 1.4 X 1.5 cm, margins inverted contused abraded with no burns blackening of skin or tattoo mark. The hole in the skull is also punched in with the fragment of bone inwards entering through d----- matter further lacerating the brain and the right end the skull bone are everted with fracture radiating out from the area with the brain matter protruding out from the right side wound which is 0.8 x 8.8 cm 2.8 cm from above head on the right parietal region 9.5 cm back from the back of right ear. The straight back established and photographed. The staining of the track is appearing as coolest tissue swab taken from invested margin.

(2) A red contused abrasion present on the left forehead joint above the left eye brow 2x2.5 cm.

(3) A red contused on the left zygomatic area on the left zygomatic area 5.5x5 cm.

(4) 2x2 cm contused abrasion on the middle aspect of nose 1 cm below nasion.

(5) A grace collar present on the wound along with abrasion collar more on the lateral side 0.5 and minimal on medial side 0.25 cm present on the right side of chest 42 cm below the head 2 cm inward from right nipple having inverted margin with no singeing and tattoo mark flames in area. The abrasion collar is pink in color with cooked tissue in the track along with rupture pleura lung tissue and a wound on the back of the body just 1 cm from the Rt axillary fold with margin everted skin legs present and fat protruding out 48 cm below head. No singing, tattoo mark present. Tag made and photographs were taken from examination from inverted margin.

(6) A wound present on the left side of chest 44 cm below head 0.8x0.8 cm, 4.5

cm above the left nipple. The margin are contused abraded with pink cooked tissue present margin inverted with track through pleura lung tissue ruptured and a wound present on the back of spine everted margin 05 cm near the T6 vertebra 40 cm below from head of body. The track made and photograph and swab taken from the inverted margin.

(7) Red contusion 1x0.5 cm over left head 2nd finger base (8) Red horizontal abraded contusion on right knee joint 1.5x0.5. The deceased died as a result of hemorrhage Shock due to injury to brain lung fracture consistent with rifled firearm".

2(iii) Further investigation in the matter was carried out on various aspects. Details of such investigation is not being referred here. However, for the purpose of deciding this petition, from the documents placed on record, it comes out that a suspicious Swift car with badly damaged rear window was recovered by the police near a hotel on Rajgarh road. The vehicle did not carry any number plate. From its Chassis number, the original owner of this vehicle was traced, who had lodged report about theft of the car on the online portal. FIR No.378/2017 had been registered in that regard on 30.7.2017 at Police Station Rohini Delhi, under Sections 392 and 34 IPC.

On the basis of description given by the witnesses two sketches of the accused persons were prepared. One was identified as Himmat alias Cheeku alias Sonu. It came out during investigation that this person had been residing in a rented accommodation since 27.7.2017 near Nanak villa Solan alongwith his friends Vipin and Naveen Dahiya (the bail petitioner). And that the trio was in Solan upto the date of commission of crime but had disappeared thereafter.

2(iv) Co-accused Vipin was traced on 18.8.2017 in district Rohtak (Haryana). He was arrested. During investigations, he disclosed that in May 2017 he along with Himmat alias Cheeku alias Sonu had stayed at Solan for few days in a hotel and thereafter in a rented accommodation. Subsequently the bail petitioner also met them in his native village. All the three persons started living in a rented room at Solan. On 7.8.2017, the three accused persons including the bail petitioner went to Duglu in the car. The vehicle was being driven by accused Himmat alias Cheeku alias Sonu. The bail petitioner was occupying the seat adjoining to the driver seat. Vipin was occupying the back seat. Himmat alias Cheeku alias Sonu was also carrying pistol with him. Enroute all of them consumed liquor. In the evening, a motor-cyclist over-took them, stopped his bike in front of the car and started arguing with them. He slapped accused Himmat alias Cheeku alias Sonu. By holding Himmat alias Cheeku alias Sonu from his hair, he started banging Cheeku's head against the car window. Himmat alias Cheeku alias Sonu took out his pistol and fired at the motor-cyclist. The motor-cyclist tried to run away from the spot. Himmat alias Cheeku alias Sonu fired two shots at the motor-cyclist. He shot him on the chest. Whereafter Vipin and the bail petitioner (Naveen) also alighted from the car. All the three accused persons subsequently drove away the car and fled from the spot

2(v) Accused Vipin also got recorded his statement under Section 27 of the Indian Evidence Act to the effect that after the incident the accused persons removed the false number plates of the car and broke them into pieces. On his identification, the damaged number plates used on the vehicle were recovered by the investigating agency.

2(vi) Search was carried out for the other accused persons. On 16.8.2017 during investigation, one Inder residing in district Rohtak (Haryana) disclosed that accused Himmat alias Cheeku alias Sonu was his brother and used to live at Tajpur Delhi. Investigating agency became aware of the fact that Himmat alias Cheeku alias Sonu had been arrested by Haryana Police in another case in FIR No.370/2017 registered in Police Station Sayla District Rohtak. His custody was transferred in accordance with law in the instant FIR. He was arrested in the instant case on 8.9.2017. On 12.09.2017, he statedly got recorded his statement under Section 27 of the Indian Evidence Act to the effect that after quarrelling with the motor-cyclist on 7.8.2017, he fired three shots at the motor- cyclist whereafter he, Vipin and the bail petitioner sat in the Swift car and drove the vehicle away from the place. After driving for sometime the accused persons stopped the vehicle, they removed its number plates and broke them into pieces. The key of the vehicle was given to the bail petitioner. Accused Himmat also statedly disclosed on 13.9.2017 that while fleeing from the place in a bus, he had thrown away the pistol. The pistol could not be found at the identified place.

2(vii) On 25.10.2017, the bail petitioner was arrested after getting his custody transferred under a production warrant from Tihar Jail Delhi. He was arrested in the instant case. The bail petitioner on 26.10.2017 got recorded his statement under Section 27 of the Indian Evidence Act. He statedly disclosed that Cheeku had fired at the deceased. That after the incident referred to above, he had removed Himmat alias Cheeku alias Sonu's telephone from the car and had thrown away the car keys. He identified the place of occurrence and the place where he had thrown the car keys. The car keys were not found there. He also identified the place, where the accused persons had been staying at Solan.

3. Though bail petition does not plead any specific grounds for release, however, learned Senior Counsel for the bail petitioner argued that there has been no proper identification of the bail petitioner to connect him with the alleged crime. The petitioner had not come out from the car. He was driving the vehicle and was on the driver seat of the vehicle. It was the other two accused persons i.e. Himmat alias Cheeku alias Sonu and Vipin who had alighted from the car and were involved in the commission of crime. Learned Senior Counsel also submitted that Section 34 IPC will not be attracted to the facts of the case as it was a case of sudden road rage. Referring to the statements of PW-1 Sh. Lal Chand Sharma and PW-2 Shri Bhim Singh, learned Senior Counsel submitted that no case against the petitioner was made out. Therefore, learned Senior Counsel prayed that the bail petitioner deserves to be enlarged on bail.

Opposing the bail petition, learned Deputy Advocate General submitted that trial

of the case is at preliminary stage. 14 out of the 46 witnesses have already been examined. Bail petitioner does not deserve to be enlarged on bail at this stage of the trial. Upon his release, the petitioner can influence the prosecution witnesses and tamper the evidence. Referring to the material on record, learned Deputy Advocate General also submitted that there is sufficient material on record against the petitioner and that petitioner was involved in the commission of offences alleged in the FIR. Therefore no case of bail against him is made out at this stage.

4. Hon'ble Apex Court in (2021) 4 SCC 781 titled *Sudha Singh Vs. State of Uttar Pradesh* observed that while granting bail to the accused, therein alleged to be a contract killer & a sharpshooter, the High Court had ignored several aspects such as potential threat to the witnesses, antecedents of the accused and the potential threat to repeat his acts etc. Hon'ble Apex Court held as under:-

"7. We find in this case that the high court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. It is needless to point out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims.

8. This Court in *Neeru Yadav vs. State of U.P.* (2014) 16 SCC 508 held that when a stand was taken that the accused was a history sheeter, it was imperative for the High Courts to scrutinise every aspect and not capriciously record that the accused was entitled to be released on bail on the ground of parity.

9. In *Ash Mohammad Vs. Shiv Raj Singh* (2012) 9 SCC 446, this Court observed that when citizens were scared to lead a peaceful life and heinous offences were obstructions in the establishment of a well-ordered society, the courts play an even more important role, and the burden is heavy. It emphasized on the need to have a proper analysis of the criminal antecedents of the accused.

10. In *Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Another* (2010) 14 SCC 496, it was held that this Court ordinarily would not interfere with a High Court's order granting or rejecting bail to an accused. Nonetheless, it was equally imperative for the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the ratio set by a catena of decisions of this Court. The factors laid down in the judgment were:

- (i) Whether there was a prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of accusations;
- (iii) severity of the punishment in the event of a conviction;

- (iv) danger of the accused absconding or fleeing, if granted bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of repetition of the offence;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger of justice being thwarted by grant of bail.

11. There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail."

In a recent decision of Hon'ble Apex Court dated 24.8.2021 delivered in criminal appeal No.883/2021 titled Harjit Singh Vs. Inderpreet Singh, after taking note of various precedents, it was observed as under:-

" 7. We have heard the learned counsel for the respective parties at length. Before considering the rival submissions on behalf of the respective parties, few decisions of this Court on how to exercise the discretionary power for grant of bail and the duty of the appellate court, particularly when bail was refused by the court(s) below and the principles and considerations for granting or refusing the bail are required to be referred to and considered.

7.1 In the case of Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P., (1978) 1 SCC 240, this Court has observed and held that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. The nature of the charge is a vital factor and the nature of the evidence is also pertinent. The severity of the punishment to which the accused may be liable if convicted also bears upon the issue. Another relevant factor is 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. The Court has also to consider the likelihood of the applicant interfering with the witnesses for the prosecution or otherwise polluting the process of justice. It is further observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

7.2 In the case of Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446, this Court in paragraphs 17 to 19 observed and held as under:

"17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due

sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well - accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, "it is regulated freedom".

18. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires. Not for nothing J. Oerter stated:

"Personal liberty is the right to act without interference within the limits of the law."

19. Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act."

7.3 In the case of *State of Maharashtra v. Sitaram Popat Vetal*, (2004) 7 SCC 521, it is observed and held by this Court that while granting of bail, the following factors among other circumstances are required to be considered by the Court:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and
3. Prima facie satisfaction of the court in support of the charge.

It is further observed that any order dehors such reasons suffers from non-application of mind.

7.4 In the case of Mahipal v. Rajesh Kumar (2020) 2 SCC 118, where the High Court released the accused on bail in a case for the offence under Section 302 of the IPC and other offences recording the only contention put forth by the counsel for the accused and further recording that "taking into account the facts and circumstances of the case and without expressing the opinion on merits of case, this Court deems fit just and proper to enlarge/release the accused on bail", while setting aside the order passed by the High Court granting bail, one of us (Dr. Justice D.Y. Chandrachud) observed in paragraphs 11 and 12 as under:

"11. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 CrPC to grant bail. The power to grant bail under Section 439 is of a wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course. In Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598, Umesh Banerjee, J. speaking for a two-Judge Bench of this Court, laid down the factors that must guide the exercise of the power to grant bail in the following terms: "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. 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. ... 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.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(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."

12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations 9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence..."

37. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail "without discussing the evidence in detail" taking into consideration:

- (1) The facts of the case;
- (2) The nature of allegations;
- (3) Gravity of offences; and
- (4) Role attributed to the accused."involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

7.5 That thereafter this Court considered the principles that guide while assessing the correctness of an order passed by the High Court granting bail. This Court specifically observed and held that normally this Court does not interfere with an order passed by the High Court granting or rejecting the bail to the accused. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. This Court further observed that the power of the appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for cancellation of bail. It is further observed that the correctness of an order granting bail is tested on the anvil of whether there was a proper or arbitrary exercise of the discretion in the grant of bail. It is further observed that the test is whether the order granting bail is perverse, illegal or unjustified. Thereafter this Court considered the difference and

distinction between an application for cancellation of bail and an appeal before this Court challenging the order passed by the appellate court granting bail in paras 13, 14, 16 and 17 as under:

"13. The principles that guide this Court in assessing the correctness of an order [Ashis 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 (2010) 14 SCC 496. 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:

"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;
- (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.

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 nonapplication of mind, rendering it to be illegal."

14. The provision 9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence..."

37. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to

support its decision to grant bail by stating that it had perused the material on record and was granting bail "without discussing the evidence in detail" taking into consideration:

- (1) The facts of the case;
- (2) The nature of allegations;
- (3) Gravity of offences; and

(4) Role attributed to the accused."for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

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. In *Neeru Yadav v. State of U.P.*(2014) 16 SCC 508, the accused was granted bail by the High Court [*Mitthan Yadav v. State of U.P.*[2014 SCC OnLine All 16031]. In an appeal against the order [*Mitthan Yadav v. State of U.P.*, 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. held:

"12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment

altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court."

17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment. The order [Rajesh Kumar v. State of Rajasthan, 2019 SCC OnLine Raj 5197] of the High Court in the present case, insofar as it is relevant reads:

"2. Counsel for the petitioner submits that the petitioner has been falsely implicated in this matter. Counsel further submits that, the deceased was driving his motorcycle, which got slipped on a sharp turn, due to which he received injuries on various parts of body including ante-mortem head injuries on account of which he died. Counsel further submits that the challan has already been presented in the court and conclusion of trial may take long time.

3. The learned Public Prosecutor and counsel for the complainant have opposed the bail application.

4. Considering the contentions put forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this Court deems it just and proper to enlarge the petitioner on bail." Thereafter this Court set aside the order passed by the High Court releasing the accused on bail."

Thereafter, this Court set aside the order passed by the High Court releasing the accused on bail.

8. At this stage, a recent decision of this Court in the case of Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (koli) 2021 (6) SCALE 41 is also required to be referred to. In the said decision, this Court considered in great detail the considerations which govern the grant of bail, after referring to the decisions of this Court in the case of Ram Govind Upadhyay (Supra); Prasanta Kumar Sarkar (Supra); Chaman Lal vs. State of U.P. (2004) 7 SCC 525; and the decision of this Court in Sonu vs. Sonu Yadav 2021 SCC Online SC 286. After considering the law laid down by this Court on grant of bail, in the aforesaid decisions, in paragraphs

20, 21, 36 & 37 it is observed and held as under:

"20. The first aspect of the case which stares in the face is the singular absence in the judgment of the High Court to the nature and gravity of the crime. The incident which took place on 9 May 2020 resulted in five homicidal deaths. The nature of the offence is a circumstance which has an important bearing on the grant of bail. The orders of the High Court are conspicuous in the absence of any awareness or elaboration of the serious nature of the offence. The perversity lies in the failure of the High Court to consider an important circumstance which has a bearing on whether bail should be granted. In the two-judge Bench decision of this Court in *Ram Govind Upadhyay v. Sudharshan Singh*, the nature of the crime was recorded as "one of the basic considerations" which has a bearing on the grant or denial of bail. The considerations which govern the grant of bail were elucidated in the judgment of this Court without attaching an exhaustive nature or character to them. This emerges from the following extract:

"4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(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."

21. This Court further laid down the standard for overturning an order granting bail in the following terms:

"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." xxx xxx xxx

36. Grant of bail under Section 439 of the CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail- as in the case of any other discretion which is vested in a court as a judicial institution - is not

unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice. This Court in *Chaman Lal v. State of U.P* (2004) 7 SCC 525 in a similar vein has held that an order of a High Court which does not contain reasons for prima facie concluding that a bail should be granted is liable to be set aside for nonapplication of mind. This Court observed:

"8. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications. Yet a court dealing with the bail application should be satisfied, as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence..." 37. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail "without discussing the evidence in detail" taking into consideration: (1) The facts of the case; (2) The nature of allegations; (3) Gravity of offences; and (4) Role attributed to the accused."

5. I have heard learned counsel for the parties and gone through the status report. I have also considered all the documents placed on record as well as the record produced by the investigating agency.

Petitioner is one of the three accused persons in the FIR registered under Sections 302, 392, 201 & 34 of the Indian Penal Code and Sections 25 & 27 of the Arms Act. Pankaj Kumar alias Lucky was shot at in the incident in question and he lost his life. Though no specific grounds have been pleaded in the bail petition, however, learned Senior Counsel for the bail petitioner argued that the bail petitioner had not been identified to be the one involved in the crime. That the petitioner was driving the vehicle and did not step out from the vehicle. I have considered the record and the statements of witnesses recorded thus far by the learned trial Court.

According to the prosecution, vehicle was being driven by Cheeku alias Himmat alias Sonu and bail petitioner was occupying the seat adjoining to the driver. As per prosecution, co-accused Vipin also confirmed this version. According to the statement made by Lal Chand under Section 154 CrPC, quarrel was going on between the car driver and the motor-cyclist. The motor-cyclist was shot at by

the person who alighted from the car subsequently. Who drove the car, who fired the shots, the role played by the accused persons in the commission of crime etc are the aspects to be determined during trial. Whether Section 34 is attracted to the case or not, is also to be determined by the competent Court during the trial. Considering the record, at this stage, it cannot be said that petitioner was not involved in commission of crime. Status report also highlights conduct of the bail petitioner subsequent to the incident, wherein he tried to destroy the evidence. Bail petitioner has a criminal history. Inasmuch as 9 FIRs had been lodged against him i.e. (i) 50/2015 Under Section 307, 506, 34 IPC & 25, 27 Arms Act at K.N.K. Marg (ii) 111/2017 under Section 302, 365, 201, 34 IPC at Alipur, (iii) 378/2017 under Section 392, 34 IPC at Prashant Vihar, (iv) 25409/ 2017 under Section 392, 411 IPC at Prashant Vihar, (v) 474/2017 Under Section 392, 394, 34 IPC at Prashant Vihar, (vi) 706/2014 under Section 323, 341, 427, 24 IPC at K.N.K. Marg, (vii) 805/2017 25 Arms Act at S.P. Badli (viii) 363/2017 under Section 365, 392, 397, 411, 34 IPC & 25 of Arms Act at Shalimar Bagh, (ix) Under Section 307, 174A, 323, 34 IPC at Shadbad Dairy.

FIR No.363/2017 under Section 365, 392, 397, 411, 34 IPC & 25 of the Arms Act and FIR No.252/2017 under Section 307, 174A, 323, 34 IPC are still stated to be pending against the petitioner, whereas in the other 7 FIRs, he is stated to have been acquitted. The trial of the case has started. 14 out of the 46 witnesses have already been examined. Trial is at preliminary stage. By reading parts of the statements of two witnesses in isolation, the case of the petitioner cannot be considered for grant of bail at this stage. 32 witnesses still remain to be examined. In such circumstances, the apprehension of learned Deputy Advocate General that the bail petitioner upon release can influence the prosecution witnesses and tamper the prosecution evidence is justified. Hence, the instant petition being devoid of merit, is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.