

(2004) 02 SC CK 0004

In the Supreme Court Of India

Case No : Criminal Appeal No. 162 of 2004 (Arising out of SLP (Criminal) No. 2814 of 2003)

Omar Usman Chamadia

APPELLANT

Vs

Abdul and Another

RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Arms Act, 1959 — Section 25, 25(1), 27
Bombay Police Act, 1951 — Section 135(1)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 324
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Secti

Citation : (2004) 1 ACR 723 : AIR 2004 SC 1508 : (2004) AIRSCW 613 : (2004) 1 ALD(Cri) 753 : (2004) CriLJ 1364 : (2004) 2 JT 176 : (2004) 1 RLW 120 : (2004) 2 SCALE 193 : (2004) 13 SCC 234 : (2004) 1 Supreme 858 : (2004) 2 UJ 1030

Hon'ble Judges : N. Santosh Hedge, J;B. P. Singh, J

Bench : Division Bench

Advocate : Ramesh P. Bhatt, Chirag M. Shroff and M.N. Shroff, for the Appellant; Archana Palkar Khopde, for Hemantika Wahi and S.S. Khanduja, for the Respondent

Final Decision : Partly Allowed

Judgement

N. Santosh Hegde, J.—Heard learned counsel for the parties.

2. Leave granted.

3. The appellant herein who is the complainant in Criminal

Case No. 402 of 2002 registered with Jamnagar Police Station, Gujarat, is challenging the impugned order of the High Court, whereby the High Court allowed a criminal misc. application filed by the first respondent herein and enlarged him on bail on conditions mentioned therein.

4. It is the case of the appellant herein that the first respondent and some other accused persons attacked the appellant and some others on 14th of August,

2002 at about 10.30 a.m. in village Bedi near Jamnagar, consequent to which attack one of the victims Anwar Ala Chamadiya died and others suffered injuries. In regard to this incident the appellant filed the above mentioned criminal complaint which was registered by the Jamnagar Police Station for offences punishable under Sections 302, 324, 325, 147, 148 and 149 IPC as also u/s 25(1) of the Arms Act and Section 135(1) of the Bombay Police Act. On coming to know of the death of above said Anwar Ala Chamadiya, the Investigating Agency added Section 302 IPC also. On being arrested on the above charges, the first respondent herein made an application for grant of bail on 25th of September, 2002 before the learned Sessions Judge. The said bail application was opposed by the State wherein the Investigating Officer filed an affidavit that this respondent was involved in 7 other cases and he had committed this present crime while he was on bail in those cases. Further, he has also been threatening witnesses, consequent to which in one of the earlier cases bail granted to him was cancelled by the Sessions Court for violating the conditions of the bail. After hearing the parties including the appellant herein, the application filed by the first respondent for grant of bail in the present case came to be rejected.

5. Against the said order of rejection of his application for grant of bail, the first respondent preferred a criminal misc. petition before the High Court of Gujarat at Ahmedabad which petition came to be allowed by the impugned order dated 31st of January, 2003. The High Court while allowing the said application recorded "the parties do not press for reasoned order". On that basis without assigning any reason why a bail refused by the Sessions Court by a reasoned order should be reversed by the High Court it proceeded to allow the application by imposing certain conditions. It is against the said order of the High Court, the appellant, who is a complainant in this case, has preferred this appeal seeking the cancellation of the bail.

6. Shri Ramesh P. Bhatt, learned senior counsel appearing for the appellant contended that all the conditions imposed by the High Court in the impugned order were also imposed by the courts which granted the first respondent the bail in the other criminal cases and the first respondent inspite of such conditions has violated the same with impunity. He pointed out that the learned Sessions Judge while rejecting the prayer for bail had noticed these cases, but the High Court did not take the same into consideration. He also pointed out from another judgment of the learned Sessions Judge, Jamnagar made on 20th of May, 2003 the court had noticed that this respondent has violated the conditions imposed on him while granting the bail in the said case, hence, has cancelled the bail. The learned counsel also pointed out that the present crime from which this appeal arises is a crime involving an offence punishable u/s 302 IPC and the said offence was committed while the said respondent was on bail in another case. Therefore, this tact clearly indicates that this respondent if permitted to be on bail the life of the witnesses including that of the complainant is likely to be in danger. He submitted that while the trial court noticed all these facts, the High Court obviously did not consider these facts and proceeded to grant bail to this

respondent in a mechanical manner.

7. Shri S.S. Khanduja, learned counsel appearing for the first respondent very seriously opposed the prayer for cancellation of bail. He submitted that there has been a continuing rivalry between the complainant and his family members on one side and this respondent both on the ground of business as also on the ground of politics, therefore, a series of false cases are being registered against this respondent with a view to keep him in custody. He submitted that the High Court after hearing the parties at length considered it a fit case to enlarge this respondent on bail and this court ought not to interfere with the said order.

8. Learned counsel appearing for the State supported the contentions of the appellant.

9. From the material on record, we notice that there are atleast 7 other cases pending against the first respondent involving offences u/s 3 & 4 of TADA, Sections 25 and 27 of the Arms Act and Sections 506(2), 325, 324, 307, 147, 326, 504 etc. of IPC, apart from offences under the Prohibition Act. It is also an admitted fact that the complaint in the present case is made against the first respondent and others when first respondent was on bail granted to him in other cases. It is also an admitted fact that in one of the cases bail granted to the first respondent has been cancelled by the learned Sessions Judge on the ground that he has violated the conditions of bail. We are informed at the bar subsequently he has come out on bail in that case also. Be that as it may, from the nature of allegation made in this case which involves the death of one of the victims and from the nature of weapon used in the said crime and in the background of the fact that admittedly atleast 7 other cases involving very serious charges against this respondent are pending trial, some of them committed after obtaining bail in other cases tentatively atleast indicates for the purpose of considering the merits of this appeal that the first respondent herein has violated the conditions of bail granted in the earlier cases and in the event of he being enlarged on bail there is every likelihood of he interfering with the investigation of this case, threatening the witnesses and may even go to the extent of causing physical harm to the complainant and others. Having perused the material on record and the judgment of the Sessions Court canceling the bail in another case, we are satisfied that this is a fit case in which the bail granted to the first respondent by the High Court should be cancelled and we intend doing so.

10. However, before concluding, we must advert to another aspect of this case which has caused some concern to us. In the recent past we had several occasions to notice that the High Courts by recording the concessions shown by the counsel in the criminal proceedings refrain from assigning any reason even in orders by which it reverses the orders of the lower courts. In our opinion, this is not proper if such orders are appealable, be it on the ground of concession shown by the learned counsel appearing for the parties or on the ground that assigning of elaborate reasons might prejudice the future trial before the lower courts. The High Court should not, unless for very good reasons desist from

indicating the grounds on which their orders are based because when the matters are brought up in appeal, the court of appeal has every reason to know the basis on which the impugned order has been made. It may be that while concurring with the lower courts' order, it may not be necessary for the said appellate court to assign reasons but that is not so while reversing such orders of the lower courts. It may be convenient for the said court to pass orders without indicating the grounds or basis but it certainly is not convenient for the court of appeal while considering the correctness of such impugned orders. The reasons need not be very detailed or elaborate, lest it may cause prejudice to the case of the parties, but must be sufficiently indicative of the process of reasoning leading to the passing of the impugned order. The need for delivering a reasoned order is a requirement of law which has to be complied with in all appealable orders. This Court in a somewhat similar situation has deprecated the practice of non-speaking orders in the case of *State of Punjab and Others Vs. Jagdev Singh Talwandi*, , that was a case where the High Court in a detention order while allowing the challenge to the detention order directed the release of the detainee before it could give a reasoned order. Even such a practice was deprecated by a Constitution Bench of this Court. Whereas in the instant case it is a final order reversing the order of the learned Sessions Judge wherein the High Court thought it not necessary to give the reasons on the ground that the counsel appearing for the parties did not press for a reasoned order. Consequently, when the matter was taken up for hearing, we had no benefit of the reasons which persuaded the High Court to pass the impugned order. Hence, we have proceeded to decide the appeal on merit based on the material available on record and the arguments addressed before us, from which we have come to the conclusion that the impugned order ought to be set aside. Though a prayer was made on behalf of the first respondent that the matter be remanded to the High Court to facilitate it to pass a reasoned order, on facts of this case, we think it proper to decide the issue before us ourselves without prolonging the proceeding any further by remanding it to the High Court. But we do record our disapproval of the practice followed by the High Court reflected in the impugned order and hope the same will not be repeated.

11. For the reasons stated above, this appeal succeeds. The bail granted to the first respondent is cancelled. He is directed to surrender within a week from today. On failure to do so the concerned police are directed to take necessary steps to arrest the first respondent.

12. Any expression of opinion found in this order is purely tentative and for the disposal of this appeal. The same shall not, in any manner, prejudice the parties in the trial of the pending cases.

13. The appeal is allowed.