
(2024) 10 RAJ CK 1194

In the Rajasthan High Court, Jodhpur Bench

Case No : Criminal Appeal (Sb) No. 2203 Of 2024

Mohh. Israr Alias Kallu S/O Mohd. Muak

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 24-10-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19, 21, 226

Rajasthan Ayurvedic, Unani, Homeopathy and Naturopathy Subordinate Service Rules, 1966 — Rule 9, 16

Citation : (2024) 10 RAJ CK 1194

Hon'ble Judges : Farjand Ali, J

Bench : Single Bench

Advocate : Yashpal Khileree, Nitin Gehlot, Vinita, M.S. Godara, Varsha Bissa, Varda Ram Choudhary, Tanya, Narendra Singh Rajpurohit, Sher Singh Rathore, Suniel Purohit, Rakhi Choudhary

Final Decision : Allowed

Judgement

Sameer Jain, J

1. The present appeal is preferred under section 14A of the Scheduled Caste and Scheduled Tribes Prevention of Atrocities Act, 1989 (hereinafter referred to as SC/ST Act) arising out of F.I.R. No. 55/2022 for offences under sections 115, 342, 343, 364, 302, 201, 120B, 37 of I.P.C. and under sections 3(2)(v), 3(2)(va) of the SC/ST Act.

2. In a nutshell the background of the matter in hand is that an F.I.R. bearing number 55/2022 was registered by the complainant-respondent no. 2 at Police Station Alwar Gate, Ajmer on 07.02.2022 for offence under section 365 of I.P.C. (Annexure-1). Resultant to which, after concluding the investigation the police authorities submitted a charge-sheet against seven accused persons, including the appellant.

3. Learned Counsel representing the appellant had averred that the appellant is

incarcerated from a prolonged time (approximately 38 months); is a young man and is the sole bread-earner of the family. Moreover, the instant appeal is preferred under the light of the provisions of the fundamental and the constitutional guarantees as enshrined under Article(s) 21 and 39A of the Constitution of India. It was further submitted that the material witnesses i.e. PW-1 to PW-2 are duly examined however, thirty-two witnesses are yet to be examined. Hence, it can be inferred that the trial shall take a long time to culminate.

4. Moreover, the witnesses that are examined till now have not supported the story of the prosecution. Further, it was contended that the co-accused (as named in the same F.I.R. and charge-sheet) are already enlarged on bail – Aditya Kishore Sharma vide order dated 28.07.2023, Gautam Singh vide order dated 06.11.2023, Devendra Kumar Yadav @Manoj Yadav vide order dated 06.11.2023. Further, it was contended that no criminal antecedents are registered against the appellant.

5. Nonetheless, with the implementation of the new criminal laws, new spheres of consideration are opened, as considering the period of sentence and if the accused has already undergone one-third of the said punishment then he/she ought to be enlarged on bail.

6. In support of the contentions made insofar learned counsel had placed reliance upon the ratio encapsulated in S.B. Criminal Misc. Second Bail Application no. 13525/2023 titled as

Rakesh @ Rodu Vs. the State of Rajasthan, S.B. Criminal Misc. Second Bail Application no. 14954/2023 titled as Rupak Chaterji Vs. the State of Rajasthan and the judgments passed by Hon'ble Apex Court in Data Ram Singh Vs. State of U.P. reported in (2018) 3 SCC 22, Sumeet Saluja Vs. State of U.P. through CBI reported in (2015) 17 SCC 210 and S.B.

Criminal Bail Application no. 861/2021 titled as Khet Singh Vs. State through PP and had submitted that it is a settled position that bail is the rule and jail is the exception; hence, the appellant ought to be enlarged on bail.

7. Per contra, learned Public Prosecutor had vehemently opposed the instant appeal and had averred that the accused-appellant preferred the fourth bail application, nonetheless, the same was rejected vide order dated 23.08.2024. Moreover, vide order dated 18.04.2024 this Court after hearing the matter at length had dismissed the third bail application of the co-accused Hari @ Langda (mafia). The said order also notes the crucial factors, considering which, the said bail application was dismissed i.e. umpteen number of criminal antecedents registered against the accused-applicant therein. It was further contended that the accused-appellant herein, is/was also in acquaintance of the said person, therefore, there is plausibility that if enlarged on bail, the accused-appellant might tamper the evidences and influence/coerce the witnesses.

8. Further, learned counsel had averred that a recovery of Rs. Two Lacs is made from the accused. Moreover, the contents of the F.I.R. and the erstwhile bail dismissal orders categorically state the threat and terror that the accused-appellant along with the other accused have made/spread in the concerned area. Therefore, considering the nature of allegations and the criminal antecedents registered against the accused-appellant, the instant appeal ought to be rejected at the threshold.

9. Heard and considered.

10. Before advertng to the facts of the case, it is important to understand the extent of the powers of the Court to grant bail and the factors determining nature and gravity of the crime in order to grant bail to accuse concerned. As rightly stated by Hon'ble Justice V.R. Krishna Iyer "the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process".

11. In Prahlad Singh Bhati Vs. NCT of Delhi And Another reported in (2001) 4 SCC 280, a two-Judge Bench of the Hon'ble Apex Court stated the principles which are to be considered while granting bail which are as follows : -

"8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

12. For grant or denial of bail, the 'nature of crime/allegation' has a huge relevancy. The significant consideration which govern the grant of bail were elucidated in the ratio passed by Hon'ble Supreme Court in Ram Govind Upadhyay Vs. Sudarshan Singh reported in (2002) 3 SCC 598, wherein it was observed as under: -

"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."

13. Similarly, the parameters to be taken into consideration for grant of bail are described in *Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav And Another* reported in (2004) 7 SCC 528 as under: -

"11. The law in regard to grant or refusal of bail is very well-settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) the nature of accusation and the severity of punishment in case of conviction and the nature

of supporting evidence.

(b) reasonable apprehension of tampering with the witness or apprehension of threat to the

complainant.

(c) prima facie satisfaction of the court in support of the charge."

14. Lastly, reliance can be placed upon the ratio encapsulated in *Deepak Yadav Vs. State of U.P. and Ors.* reported in (2022) 8 SCC 559, wherein it was explicitly stated that:-

"There is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether a case is fit for the grant of bail involves 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. This Court does not, normally interfere with an order 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 basic principles laid down in a catena of judgments by this Court."

15. Considering the aforementioned observations and juxtaposing the averments raised by the learned counsel for both the sides this Court is of the following stance:

15.1. The judgments cited by the learned counsel for the appellant are on distinguishable factual matrix, as in the matter in hand serious allegations coupled with the provisions of special Act are leveled. Moreover, in the matter in hand the accused have umpteen number of criminal antecedents registered against them, and it prima facie appears that they are a threat to the society.

15.2. Upon a perusal of the records placed before this Court, it can be deduced that the bail applications of a number of accused are cyclically dismissed by orders either of this Court or by the learned Trial Court, after due consideration of vital aspects; for instance, the number of criminal antecedents registered against the accused, nature of allegations, habitualness of the accused etc.

15.3. For granting of bail in cases under SC/ST Act, period of incarceration cannot be the sole ground, it has to be considered on the gravity and nature of the offence. From the above, it is seen that the appellant along with other accused committed gruesome murder and threatened the victim at several instances. Nevertheless, while considering a matter for bail, this Court deems it apposite to restrict itself to enter into the issues of facts and merits/demerits of the instant matter.

16. Therefore, considering the erstwhile order sheets; no considerable change in circumstances; nature of allegations leveled; the plausibility that the accused-appellant might influence or tamper with the evidence/ witnesses; effect on public at large this Court is not inclined to enlarge the appellant on bail.

17. Accordingly, the instant appeal is dismissed. Pending applications, if any, shall stand disposed of.