

(2002) 02 SC CK 0054

In the Supreme Court Of India

Case No : Criminal Appeal SLP(Crl.) 173, 2002, 3444

Suresh Kumar Somabhai Rana

APPELLANT

Vs

Ashok Kumar Haraklal Mittal and Others

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437, 473

Citation : (2002) 2 ACR 1463 : (2003) 1 GLR 686 : (2002) 2 JT 431

Hon'ble Judges : M. B. Shah, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. Heard the learned counsel for the parties.

3. Normally, this Court does not interfere in the bail matters and the orders of High Court are generally accepted to be final relating to grant or rejection of bail. However, it is really unfortunate that without considering the nature and gravity of offence, the High Court of Gujarat without recording any reasons has set aside the well-reasoned order passed by the trial court, refusing the bail to the accused involved in an offence punishable under Sections 302 and 149 of the Indian Penal Code. Apart from the serious allegations made against the accused, it has been pointed out that while rejecting the bail application, that court has taken into consideration the following facts:

"While taking into consideration the provisions of Section 149 of IPC to my mind, (here is substantial allegation of serious offence against all the five accused of causing death by causing injuries with weapon like knife to the deceased Pareshbhai, against whom it appears, there is prima facie case, and it does not appear proper to enlarge such accused on bail.

Wife of accused Piyushbhai is a member of Palanpur Municipality and criminal

proceeding has been done in first C.R. No. 191/99 and C. R No. 288/99 under Sections 324 506(2) IPC.

All the accused are resident of Delhi Gate area of Palanpur.

The facts revealed from the affidavits on behalf of the prosecution that it is likely that the accused will give threats to the prosecution witnesses and will turn them hostile by making and having got made false cases This doubt of the prosecution in the facts of this case, do not appear to me without any substance."

4. In the affidavit filed before this Court, it has been further pointed out that the accused are having criminal background since 1989 and various cases are filed against them. This aspect is neither disputed by the learned counsel for the state government nor by the counsel for the accused. However, it has been stated on behalf of the accused that in some of the cases, accused are acquitted and rest are pending.

5. In the facts of the present case, it is also surprising that when well- reasoned order was before the High Court, without giving an opportunity to the concerned investigating officer, additional public prosecutor appearing before the court waived the service and not pressed for any reasoned order for granting bail in such a serious case. In a case, where the accused are involved u/s 302 IPC, it should not be forgotten that granting or refusing to grant bail is the function of the court to be discharged judicially and not arbitrarily.

6. In our view, such an order would be against the established principles of law and also against the interest of justice which has serious impact on the society. In such cases, if accused are let loose before the trial, they would have an opportunity to tamper with the evidence by their muscle and money power. It is equally true that personal liberty of the citizens should not be interfered without following the procedure of law but in cases like this, if such persons are released by mere asking, it would affect the administration of criminal justice. This Court in Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and Another, observed, "liberty is to be secured through the process of law, which is administered keeping in mind the interest of the accused, the near and dear ones' of the victim, who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution."

7. In the result, the appeal is allowed. Order passed by the High Court is set aside. Order passed by the additional sessions judge, Banaskantha district, Palanpur is restored. The concerned authorities are directed to take the accused into custody forthwith. However, we direct the trial court to follow strictly the provisions of Section 309 IPC and conduct the trial as expeditiously as possible.

8. The appeal stands disposed of accordingly.

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