

CASE NO.:
Appeal (crl.) 1269 of 2004

PETITIONER:
Sompal Singh

RESPONDENT:
Sunil Rathi & Anr.

DATE OF JUDGMENT: 03/11/2004

BENCH:
CJI R.C. Lahoti & G. P. Mathur

JUDGMENT:
J U D G M E N T

(Arising out of Special Leave Petition (Crl.) No.2921 of 2004)

G. P. MATHUR, J.

1. Leave granted.
2. This appeal, by special leave, has been preferred by the complainant, Sompal Singh (first informant) against the judgment and order dated 27.5.2004 of Allahabad High Court by which Sunil Rathi (respondent no.1) has been granted bail in a case under Section 147/148/149/302/307/404/504 and 506 IPC.
3. Sunil Rathi had been initially granted bail by the High Court on 30.5.2003. This order was challenged by the complainant Sompal Singh by filing Special Leave Petition (Crl.) No.2551 of 2003. The appeal was disposed of by this Court on 6.1.2004 and the relevant portion of the order is being reproduced below :
"Having heard the learned counsel for the parties, we are satisfied that the disposal of the prayer for bail cannot be termed satisfactory. At least three flaws are apparent : (i) The fact that the accused is named in the F.I.R., (ii) the fact that the accused had several other accusations to his credit; and (iii) the fact that the co-accused was denied bail, have not received consideration at the hands of the High Court."

The order dated 30.5.2003 was accordingly set aside and the bail application filed by respondent no.1 was directed to be considered afresh by the High Court after affording the complainant and the State an opportunity of hearing.

Thereafter, the bail application was again heard by the same learned Judge and the accused was granted bail by the order dated 27.5.2004 which is the subject matter of challenge in the present appeal.

4. According to the case of the prosecution, the incident took place at about 7.00 a.m. on 21.6.2001 when Sunil Rathi (respondent no.1), his brother Arvind, Vikram, Virender @ Kalu, Shyambir, and Pramendra along with 3-4 other persons came and resorted to firing by pistols and stenguns upon Mahak Singh and Mohkam Singh while they were sitting on the chabutara of the baithak of Mohkam Singh. Mahak Singh and Mohkam Singh received several gun shot injuries and died on the spot. Vedu and Vipin Kumar son of Mahendra Harijan were also injured. An FIR of the incident was lodged by Sompal Singh, brother of deceased Mahak Singh shortly thereafter at 8.00 a.m. at Police Station Doghat, which is 5 kms. away from the place of occurrence. The autopsy on the body of Mahak

Singh was performed at 5.15 p.m. on the same day and the doctor found eight gun shot injuries on his person including five entry wounds and five exit wounds on the chest. The autopsy on the body of Mohkam Singh was performed at 6.15 p.m. and gun shot injuries were found on his body. The two injured, namely, Vedu and Vipin Kumar were medically examined at 9.30 a.m. at Primary Health Centre, Baraut and they were found to have sustained gun shot injuries.

5. According to the case of the prosecution, Sunil Rathi, respondent no.1 had a strong motive to commit the crime on account of some election dispute and earlier criminal cases. The incident was witnessed by Sompal Singh, Vikram (brother of deceased Mohkam Singh) and some others. The FIR was promptly lodged naming respondent no.1 and assigning a specific role to him of shooting by a fire arm. The prosecution version of the incident finds complete corroboration from medical evidence. The bodies of the two victims were found on the Chabutra and blood was also found there. The bail application of co-accused Virender @ Kalu had already been rejected by another learned Judge of the High Court. The respondent no.1 was involved in several criminal cases. In such circumstances, we do not find any justification at all for grant of bail to him.

6. After the earlier order granting bail had been set aside by this Court, a fresh bail application was filed in the High Court on 27.2.2004, which came up for hearing on 1.3.2004 before another learned Judge who had been assigned the jurisdiction. For reasons which are not clear from record, an order was passed by him to list the bail application before the same learned Judge who had granted bail on the earlier occasion. This order may have been proper had it been a second bail application in view of Chapter V Rule 13 of the Allahabad High Court Rules. But this being not a second bail application, the jurisdiction to hear the bail application lay with the learned judge assigned with the jurisdiction by the Chief Justice and he could not have passed an order directing the matter to be listed before a particular judge.

7. Coming to the merits of the case, in our opinion, the learned Judge did not decide the bail application on considerations which are relevant. The learned Judge noted the three grounds on which the earlier order granting bail to the accused had been set aside by this Court and then said as follows :

"These are the three factors, which this Court is required to give its consideration before affirming or disowning the previous order passed by it in favour of the accused-applicant on 30.5.2004."

A reading of the impugned order shows that instead of considering the matter de novo in the light of the observations made by this Court, the whole effort of the learned Judge has been to give justification for the order earlier passed by him on 30.5.2003 by which bail was granted to the accused. At various places, the learned Judge has referred to his earlier order and has tried to justify the same. A long passage from the earlier order has been reproduced and at a later stage it is said - "though that fact is not mentioned but a perusal of my order dated 30.5.2003 in its totality leads to the conclusion that I had applied myself quite consciously to the facts available on record and thereafter the accused was enlarged on bail by me by the said order."

8. This Court while setting aside the bail granted to the accused at earlier occasion had specifically said that the fact that accused had several other accusations to his credit had not received consideration at the hands of the High Court. In the bail application which was filed afresh in the High Court wherein the impugned order has been passed on 27.5.2004, the applicant had himself given details of seven criminal cases in which is he involved. Some of them are quite serious, namely, (i) Crime No.89 and 91 of 2001 under Section 307/420/468 IPC of P.S. Kankhal, Haridwar; (ii) Crime No.135 of 2001 under Section 2/3 U.P. Gangsters and Anti-social Activities (Prevention) Act, P.S. Kankhal, Haridwar; (iii) Crime No.63 of 2001 under

Section 2/3 U.P. Gangsters and Anti-social Activities (Prevention) Act, P.S. Lal Kurti, Meerut; (iv) Crime No.238 of 2001 under Section 302/120 IPC, P.S. Lal Kurti, Meerut; (v) Crime No.125 of 2001 under Section 147/138/307 IPC, P.S., Charthawel, Muzaffarnagar; and (vi) Crime No.40 of 2000 under Section 302/307/96, P.S. Okhla, Delhi. Instead of giving due consideration to the aforesaid fact, namely, on account of involvement of the accused in several other criminal cases whether a discretion of granting bail should be exercised in his favour, the learned Judge merely said that when the bail application was heard by him at the earlier stage, the fact regarding involvement of the accused in other cases was not brought to his notice and again brushed aside the said point by stating as under :

"No counsel for the complainant appeared in my Court to oppose the said bail application at that stage. Therefore, I had heard only learned A.G.A. It cannot be said with certainty that any fact with regard to the criminal antecedents were brought by learned A.G.A. in my notice, so it might have slipped attention."

9. While granting bail, the High Court has given great emphasis to some minor discrepancies alleged to have occurred during the course of investigation of the case. It is well settled that every infirmity in investigation does not lead to an inference that the case of the prosecution is false or the accused is entitled to acquittal. (See *Ambika Prasad v. State* 2000 (2) SCC 646 and *Ram Bihari Yadav v. State of Bihar* 1998 (4) SCC 517). Though the High Court was hearing a bail application it has gone to the extent of recording a finding that the informant Sompal Singh and Vikram were not present at the time of the occurrence, only on the ground that they had not received injuries in the incident and the two injured witnesses, namely, Vedu and Vipin Kumar son of Mahendra Harijan had not specifically mentioned about their presence in their statement under Section 161 Cr.P.C. The statements under Section 161 Cr.P.C. of these two injured persons are very brief one. They merely stated about their receiving injuries by fire arm at about 7.00 a.m. on 21.6.2001 but neither named any accused nor any witness. It is obvious that both these persons did not want to get themselves involved in the dispute in any manner and, therefore, avoided to name any one. The statement of eye-witnesses Sompal Singh and Vikram had been recorded in the trial long back and even the statement of the accused under Section 313 Cr.P.C. had also been recorded on 27.2.2004. The trial could not be concluded as the charge was amended and the prosecution witnesses were summoned again to enable the accused to cross-examine them in the light of the amended charge. The bail application was heard by the High Court much later on 27.5.2004. Instead of deciding the bail application on the basis of the evidence which was then available on record, the High Court chose to rely upon the statements of Vedu and Vipin Kumar as recorded under Section 161 Cr.P.C. for holding that the two eye witnesses namely, informant Sompal Singh and Vikram were not present. The prosecution did not examine Vedu and Vipin Kumar as witnesses in the trial, and, therefore, their statements under Section 161 Cr.P.C. could not be used at all at that stage.

10. We are constrained to notice a very disturbing feature in the order of the High Court. The learned Judge referred to a Constitution Bench decision of this Court rendered in *Bihar Legal Support Society v. Chief Justice of India* AIR 1987 SC 38 and quoted in extenso paragraph 3 of the reports. In this case the Bihar Legal Support Society, claiming that its main aim and objective was to provide legal support to the poor and disadvantaged section of the community, filed a writ petition under Article 32 of the Constitution, after bail had been granted by this Court to two industrialists in night, and, the prayer made was that the same anxiety which was shown by this Court in taking up the bail application of the two industrialists, must permeate the attitude and inclination of the Court in all matters where questions relating to liberty of citizens, high or low, arises, and that the bail applications of small men must receive the same importance

as the bail application of big industrialists. In the judgment it was pointed out that while hearing special leave petitions no distinction is made between 'small men' and 'big industrialists' and the question whether special leave petitions against refusal of bail or anticipatory bail should be listed or not is a question within the administrative jurisdiction of the Chief Justice. During the course of discussion, reference was made to an order dated 30.10.1985 in Special Leave Petition (Crl.) No.2938 of 1985, wherein it was held that this Court should not "interfere with the orders granting or refusing bail or anticipatory bail" and that "these are matters in which the High Court should normally become the final authority." It was observed that the Supreme Court should not ordinarily, save in exceptional cases, interfere with orders granting or refusing bail or anticipatory bail, because these are matters in which the High Court should normally be the final arbiter.

11. The aforesaid case had absolutely no relevance for the decision of the bail application, which was being considered by the High Court. The reason why the learned Judge referred to and reproduced para 3 of the reports would be clear from what he said in the impugned order, which reads as under :

"The order granting bail or refusing to grant bail are interlocutory orders, the new Code of Criminal Procedure has clearly provided for no revision against any such orders. When an order granting bail passed by a Sessions Judge is not revisable in the High Court, likewise the matter when it goes to the apex Court should also be dealt with in the light of the guidelines professed by its above said decision."
(emphasis supplied)

What in effect the leaned Judge has said is that when an appeal is filed against an order of the High Court granting bail to an accused, it should be decided by the Supreme Court in accordance with the observations made in the case of Bihar Legal Support Society (supra), meaning thereby that this Court should not have interfered with his earlier order dated 30.5.2003 granting bail to respondent no.1.

12. In a recent decision rendered in Tirupati Balaji Developers Pvt. Ltd. v. State of Bihar 2004 (5) SCC 1, it was pointed out that under the Constitutional Scheme as framed for the Judiciary, the Supreme Court and the High Court, both are Courts of Record and the High Court is not a court subordinate to the Supreme Court, but there are a few provisions which give an edge and assign a superior place in hierarchy to the Supreme Court over the High Court and insofar as the appellate jurisdiction is concerned, in all civil and criminal matters, the Supreme Court is the highest and the ultimate Court of appeal. This position is highlighted in para 9 of the reports which reads as under :

"9. In a unified hierarchical judicial system which India has accepted under its Constitution, vertically the Supreme Court is placed over the High Courts. The very fact that the Constitution confers an appellate power on the Supreme Court over the High Court, certain consequences naturally flow and follow. Appeal implies in its natural and ordinary meaning the removal of a cause from any inferior court or tribunal to a superior one for the purpose of testing the soundness of decision and proceedings of the inferior court or tribunal. The superior forum shall have jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to re-hear the matter and comply with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below and failure on the part of latter to carry out such directions or show disrespect to or to question the

propriety of such directions would \026 it is obvious \026 be destructive of the hierarchical system in administration of justice. The seekers of justice and the society would lose faith in both."

13. In the hierarchical judicial system, it is not for any Court to tell a superior Court as to how a matter should be decided when an appeal is taken against its decision to that superior Court. Such a course would be subversive of judicial discipline on the bedrock of which the judicial system is founded and finality is attached and orders are obeyed. We do not consider it proper to say anything further and would like the matter to rest there.

14. For the reasons discussed above, the appeal is allowed and the order dated 27.5.2004 granting bail to Sunil Rathi (respondent no.1) is set aside. If he has already been released he shall be taken into custody forthwith.