

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 787 OF 2009
(Arising out of SLP(CrI.) No. 3246 of 2008)

Subhash Chandra Singh

..Appellant

versus

Dheemant Singh & Anr.

..Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the the order passed by a learned Single Judge of the Allahabad High Court granting bail to the respondent No.1. The appeal is by the father of the Shobhna (hereinafter referred to as the ‘deceased’) who was married to the respondent No.1. It is stated that the

death took place within seven years of the marriage and it was unnatural death. The High Court by a practically non-reasoned order granted bail. It is pointed out by learned counsel for the appellant that no reason has been indicated for directing grant of bail and even the conclusions are contradictory in terms.

3. Learned counsel for the respondent No. 1 on the other hand submitted that the bail was granted on 30th October, 2007. There is no allegation that the accused respondent No. 1 has misused the liberty after release on bail. The charge sheet has already been submitted and the investigation is over. The accused was in custody for more than five months.

4. Even 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.

5. 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. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

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 of the witness or apprehension of threat to the complainant;
3. Prima facie satisfaction of the Court in support of the charge.

6. Any order dehors such reasons suffers from non-application of mind as was noted by this Court, in Ram Govind Upadhyay v. Sudarshan Singh and Ors. [(2002) 3 SCC 598], Puran etc. v. Rambilas and Anr. etc. [(2001) 6 SCC 338)] and in Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr. [JT 2004 (3) SC 442].

7. The above position was highlighted by this Court in Anwari Begum v. Sher Mohd. (2005(7) SCC 326).

8. As rightly submitted by the learned counsel for the appellant, the High Court's order is a bundle of confusion. On one hand it is noted that there was no dispute that the death had taken place within seven years of the marriage and that it was unnatural death. Having said so, it is not understood as to how the High Court observed that the provisions of Section 113(B) of the Indian Evidence Act, 1872 (in short the 'Evidence Act') are not applicable and this is not a case punishable under Section 304 B IPC. That being so we set aside the impugned order of the High Court and remit the matter to it for fresh consideration and disposal by a reasoned order.

9. The Appeal is allowed.

.....J.
(Dr. ARIJIT PASAYAT)

New Delhi,
April 20, 2009

.....J.
(ASOK KUAMR GANGULY)