NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL) NO. 4158/2019

Ketan Suresh Pawar & Anr. ....Petitioner (s)

Versus

Yuvraj Sandeepan Sawant & Anr. .... Respondent(s)

J U D G M E N T

A.S. Bopanna,J.

1. The petitioners are before this Court assailing the order dated 13.02.2019 passed by the High Court of Judicature at Bombay in Criminal Bail Application No.191 of 2019. Through the said order the learned Judge of the High Court has directed the release of the respondent No.1 herein subject to the conditions imposed therein. Though the petitioners were not parties to the proceedings before

the High Court, being the complainants, which culminated in the registration of the F.I.R. No. 485 of 2014 registered under Sec. 420, 406, 465, 467, 468, 471 and 34 IPC on 27.11.2014 with Khar Police Station, they are in that view claiming to be aggrieved by the grant of bail.

2. Heard Shri Viraj Kadam learned counsel for the petitioners, Shri R. Basant, learned senior counsel for respondent No.1 and Shri Nishant Ramakantrao Katneshwarkar learned counsel for respondent No.2 - State and perused the petition papers.

3. The brief facts leading to the case put forth by the prosecution is that in the year 2014 one Yogesh Ahir lodged a complaint against Sunita Tupsaundarya, Ramesh Chavan, Jitendra Gadia and Yuvraj Sawant Patil. In the complaint it is alleged that the complainant was in search of a premises for purchase and had accordingly traced the Estate Agent namely the Jitendra Gadia who was dealing in bank auction flats. The said Estate Agent had represented to the complainant about the Special Quota Scheme under which the premises could be purchased

without the lottery system. The complainant having shown his willingness had paid Rs.3 lakhs to Vijaynath Pal and received possession letter of the premises from Jitendra Gadia. The further payments made in that regard to Jitendra Gadia is referred in the complaint and it is alleged that the false assurances given were not fulfilled. In that regard though cheques of Rs.10 lakhs and Rs.15 lakhs were received by the complainant from Sunita Tupe the said cheques were dishonoured and accordingly the complainant was cheated to the extent of Rs.26.50 lakhs. The case is also that in respect of the complaint the co-accused of the respondent No.1 were arrested and on completing the investigation, the charge sheet was filed against them. However, the respondent No.1 herein was arrested on 18.12.2018. In that view the respondent No.1 herein filed the application for bail before the Sessions Court which was rejected through the order dated 04.01.2019. It is in that light the petition was filed before the High Court seeking bail. The High court having taken note of the sequence of events and also taking into consideration the nature of the offence alleged and the role

of the other co-accused, further taking note that the other accused are granted bail, has allowed the application filed by the respondent No.1, enlarging him on bail.

4. The learned counsel for the petitioners while assailing the order passed by the High Court has primarily contended that the order dated 13.02.2019 passed by the High Court does not assign any reason for the conclusion to grant the bail. Though at this point, it is not disputed that a detailed order has also been passed by the High Court, the learned counsel would refer to the copy produced along with the counter affidavit filed on behalf of respondent No.1 to contend that the same was uploaded only on 30.04.2019 and as such the reasons were not available on 13.02.2019. It is his further contention that the learned Judges of the Committal Court as also the learned Judge of the Sessions Court have rejected the bail application after assigning appropriate reasons. Despite that, the High Court without reference to these aspects of the matter has allowed the application. Insofar as the allegations as contained in the complaint, it

is contended that the respondent No.1 being an employee of MHADA has indulged in committing fraud and deceiving several persons. It is his further case that the respondent No.1 is highly influential and in that circumstance, he had evaded arrest till December, 2018. In view of his arrest, further investigation would be necessary and the additional charge sheet is to be filed. Hence his release on bail would not be appropriate.

5. The learned senior counsel appearing on behalf of Respondent No.1 has, however, contended that the High Court in fact has passed a detailed order on 13.02.2019 itself as is evident on the face of the order but if there was delay in uploading the same it cannot affect the validity of the order. It is pointed out that the delay in arresting the respondent No.1 is not on account of the respondent No.1 evading the arrest. It is his contention that the respondent No.1 who is named Yuvraj Sandeepan Sawant is not in fact the person involved as the complaint was filed against one Yuvraj Patil Sawant and the other persons named in the complaint. In that circumstance, it

is contended that the High Court having referred to the nature of the complaint and also having taken into consideration that the other accused have been granted bail despite the remand application referring to the role played by them, has granted bail to respondent No.1. In that view it is contended that when the High Court has taken note of all aspects and exercised the discretion to grant the bail the same does not call for interference.

6. At the outset, insofar as the contention relating to the impugned order not containing reasons for the conclusion; presently when it is noticed that the detailed order is available, merely on the ground that the detailed order was uploaded on 30.04.2019 we do not find it appropriate to doubt the existence of the order inasmuch as the detailed order also indicates the date 13.02.2019 and the order dated 13.02.2019 impugned by the petitioners herein appears to be the operative portion of the detailed order. In that regard it cannot be lost sight that in cases where liberty of the person is involved and the relief to enlarge on bail is granted, for immediate

compliance the operative portion would be made available immediately and a copy may have been retained in the file. In that circumstance the contention on that aspect alone need not be taken as a circumstance for this Court to interfere with the order passed by the High Court by construing it as a non-speaking order.

7. Insofar as the aspect with regard to the discrepancy in the name of the respondent No. 1 in the complaint and the contentions urged thereto by the learned senior counsel for respondent No. 1 also need not be gone into in the instant proceedings since those are aspects which would remain as a defence in the trial and the complicity or otherwise of the respondent No. 1 on that basis would be determined therein. Therefore, limited to the aspect relating to consideration of an application for bail, the matter needs to be noted. Though the F.I.R. is lodged on 27.11.2014 and the respondent No. 1 herein was arrested during December, 2018, it is not borne out from the record that the arrest was not possible as he was absconding or was evaded in any other manner. On the

other hand, the investigating agencies themselves had not arrested him at an earlier point and the same cannot be held against the respondent No. 1 as a circumstance to deny bail by accepting the contentions put forth by the learned counsel for the petitioners herein. That apart the observations contained in the order dated 04.01.2019 of the learned Sessions Judge referred to by the learned counsel for the petitioners that there was intervention by a Central Minister was not based on any concrete material and further the fact remains that the respondent No. 1 in any event was arrested and the instant consideration was for a regular bail and not one for anticipatory bail so as to take the same as a basis for consideration.

8. In that background considering that the charge sheet had been filed and the other co-accused have been enlarged on bail, the High Court has considered it appropriate to grant the bail in favour of the respondent No. 1 herein. Though the learned counsel for the petitioner herein contends that the allegations against the respondent No. 1 is of a serious nature, the present

custody being prior to trial the same cannot be treated as one after conviction so as to deny the bail based only on the allegation though in appropriate cases the same is also to be kept in perspective. The allegations in any event would be gone into in the trial. Even if a supplementary charge sheet is required to be filed, the respondent No. 1 was available in custody from the date of his arrest till the grant of bail. That apart, the State/Investigating Agency has not made any grievance by challenging the order, contending that his custody is required for interrogation. Even if he is on bail, he shall certainly make himself available. In addition, it is seen that the respondent No. 1 was released on bail as far back as on 13.02.2019 and there is no material on record to indicate that as on today any of the conditions imposed while granting bail has been violated. Needless to mention that if the respondent No.1 violates the bail conditions, it will be open for the petitioner herein to approach the High Court in that regard.

9. The learned counsel for the petitioners has placed reliance on the judgment of this Court in the case of ***Chandrakeshwar Prasad @ Chandu Babu & Anr. vs. State of Bihar & Ors***. (2016) 9 SCC 443 to contend that in the said case it was held that the High Court had erred in granting bail to the respondent accused therein without taking into consideration the overall facts otherwise having a bearing on the exercise of its discretion on the issue. In the said case it is noticed that the F.I.R. had indicated that the accused is a habitual offender and he had already been awarded two sentences of life imprisonment and also named in several criminal cases. The accused therein was also a category-A history sheeter in view of his persistent criminal antecedents. In that background in the case which was being dealt with and the bail was under consideration, he had been charged with the offence of facilitating the murder of a witness in a case in which he was being tried. In that background, having considered all aspects this Court had arrived at such conclusion. Needless to mention, in a matter

relating to consideration of a bail application the facts of each case will have to be weighed on its own merits keeping in view the principles for grant of bail, while exercising the discretion available to the Court. In that background, in the instant case, for the reasons stated above the discretion as exercised by the High Court cannot be termed as erroneous.

10. Accordingly, we see no reason to interfere with the order dated 13.02.2019 impugned herein. The special leave petition being devoid of merits stands dismissed.

.....J.
(R. BANUMATHI)

.....J.
(A.S. BOPANNA)

New Delhi,
August 27, 2019