

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2022
(Arising out of SLP (Criminal) No.5181 of 2021)

AMINUDDIN

.....Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH & ANR.

....Respondent(s)

WITH

CRIMINAL APPEAL NO. OF 2022
(Arising out of SLP (Criminal) No.5182 of 2021)

JUDGMENT

DINESH MAHESHWARI, J.

Leave granted.

2. Both these appeals are directed against the orders dated 26.08.2020 and 17.06.2020 as passed by the High Court of Judicature at Allahabad, respectively in Criminal Miscellaneous Application Nos. 21839 of 2020 and 11840 of 2020, whereby the High Court has granted the concession of bail to the accused persons who are arrayed as respondent No. 2 in each of these appeals.

3. Perusal of the orders impugned make it explicit that the High Court had passed the said orders essentially with reference to the relief granted to the other co-accused persons, as could be noticed from the following submissions taken note of by the High Court in the order dated 26.08.2020:

" Heard learned counsel for the applicant, learned AGA for the State and perused the material placed on record.

Learned counsel for the appellant submitted that he has been falsely implicated in the present case. There is general allegation against all the accused and co-accused Faim & Nasir having an identical role has been enlarged on bail by this Court in Criminal Misc. Bail Application No. 6083 of 2020 & 11840 of 2020 vide orders dated 25.2.2020 & 17.6.2020 respectively. The case of applicant stands on similar footing, hence the appellant is also entitled for bail on the ground of parity. The appellant is languishing in jail since 21.8.2019 and he has no criminal history except the present case to his credit.

Learned A.G.A. has opposed the prayer for bail, but could not dispute the aforesaid facts."

4. Similar have been the contentions and observations in the other impugned order dated 17.06.2020.

5. On the matters being taken up for consideration, it is not in dispute that in relation to the other co-accused persons related with this matter, this Court has dealt with the orders granting bail and while disapproving, has set aside the same. To be specific, in the order dated 15.03.2021 in Criminal Appeal No. 317 of 2021, this Court considered and disapproved the order granting bail to the co-accused Fahim. Thereafter, in the order dated 23.09.2022 in Criminal Appeal No. 1669 of 2022, this Court disapproved another bail order made in relation to another co-accused Naim.

6. In essence, in the orders aforesaid, this Court has found that the High Court proceeded to grant the concession of bail, while proceeding on irrelevant considerations and while ignoring relevant features of the case. The orders impugned in the present appeals also suffer from the same shortcomings. In fact, these orders have been passed only following the orders passed earlier in relation to the co-accused persons, which have already been disapproved by this Court.

7. Faced with this position, the learned counsel appearing for the accused-respondent No. 2 has attempted to submit that the said decisions of this Court may not operate against the present respondents for certain distinguishing features. In this regard, the learned counsel has submitted that the accused, in whose relation the order dated 15.03.2021 was passed by this Court, had remained in custody only for a period of six months whereas, the present respondents have been in custody for thirteen months and nine months respectively, before being granted the concession of bail. Learned counsel has further submitted that the orders impugned were passed more than two years ago and it may not serve the cause of justice, if the orders are set aside now and at this juncture. The learned counsel has further read out all the conditions imposed by the High Court while granting bail and has

submitted that stringent conditions have been imposed and it has not been the case of anyone that the accused-respondents have violated any of these conditions. The learned counsel has also submitted that in the generalized accusations without any specific role of the persons concerned, the High Court has rightly granted bail to the present respondents which may not be interfered with, even if this Court has taken contra view in relation to the other co-accused persons.

8. Learned counsel for the appellant as also the learned counsel for the State have essentially relied upon the said two decisions of this Court and have submitted that there is no material distinction in the case of present respondents, who were granted the concession of bail only in parity with the co-accused persons, whose bail plea has already been declined by this Court. Hence, the impugned orders deserve to be set aside.

9. In the judgment and order dated 15.03.2021, in Criminal Appeal No. 317 of 2021, this Court has, *inter alia*, observed and ordered as under:

" 7. The circumstances would indicate that a brutal murder has been committed of the son of the appellant. The postmortem report would indicate as many as eight ante mortem injuries. The offence is alleged to have taken place in broad day light. The First Information Report being Case Crime No 438 of 2019 was registered at about 2108 hours, within a period of four hours of the incident which is alleged to have taken place at 1715 hours on the same day. After the

investigation was completed, the charge-sheet has been submitted before the competent court under Section 173 of the Code of Criminal Procedure 1973. In several judgments of this Court, the need for the High Court to adduce reasons while granting bail has been underscored. At this stage, we may advert to the recent decision in *Mahipal vs Rajesh Kumar*¹, which was relied on by Ms Bansuri Swaraj, learned counsel for the State of UP. Speaking for a two-Judge Bench, one of us (Justice D Y Chandrachud, J) observed:

“25. Merely recording “having perused the record” and “on the facts and circumstances of the case” does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.

27. Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court.”

8. In the present case, the High Court has merely observed that bail was being granted after considering the submissions and having regard to the “larger mandate of Article 21”. There can be no manner of doubt that the protection of personal liberty under Article 21 is a constitutional value which has to be respected by the High Court, as indeed by all courts. Equally, in a matter such as the present, where a serious

offence of murder has taken place, the liberty of the accused has to be necessarily balanced with the public interest in the administration of criminal justice system which requires that a person who is accused of a crime is held to account. Having regard to the settled principles which govern the grant of bail in a matter involving a serious offence in a case such as the present, we are of the view that the order of the High Court does not clearly pass muster. No case for the grant of bail is made out. In granting bail, the High Court has failed to notice relevant considerations which ought to have been, but have not been taken into account.

9. In the above circumstances, we allow the appeal and set aside the impugned judgment and order of the High Court dated 25 February 2020. As a consequence of this order, the second respondent shall surrender forthwith."

10. Further, in the order dated 23.09.2022, this Court took note of the other facts and circumstances of the case. In the said case, a distinction was sought to be suggested before this Court from the case of the other accused that no proper contest was made on his behalf before this Court.

11. This Court took note of all the features of the matter and thereafter, set aside the impugned order dated 03.12.2020 while, taking note of the previous judgment and order dated 15.03.2021 and thereafter observing and directing as under:

"14. The position aforesaid equally applies to the present case too. Moreover, when the bail granted to co-accused person has been disapproved by this Court and such grant of bail to co-accused had been the only reason for which the bail was granted to the respondent No. 2, the impugned order is liable to be set aside.

15. The submissions on behalf of the

respondent No. 2 that there was no proper contest on behalf of the said co-accused in this Court could hardly take away the substance of the dictum of this Court. It is clear that in said case, the High Court had proceeded in a rather cursory manner and without regard to the salient feature of the case at hand, being that of gruesome day-light murder of the son of the appellant with 8 grievous injuries, including those of incise wounds and stab wounds on and around the neck and the chest.

16. As regards the case of respondent No. 2, we are constrained to observe that even if the High Court proceeded to consider the fact that the co-accused person had been granted bail, at least this much was required that the relevant facts of the case were indicated as also the reasons as to how the case of respondent No. 2 was treated to be identical. The relied upon order had been suffering from failure on the part of the High Court to notice the relevant considerations and the impugned order equally suffers from the shortcoming that the relevant features of the case have not at all been considered by the High Court.

17. The submissions that the respondent No. 2 had been in custody since 02.09.2019 or that he had no negative antecedents, by themselves, do not make out a case for grant of bail, looking to the seriousness of crime in question. In this regard, the submissions of the Investigating Officer cannot go unnoticed that while the incident took place on 10.07.2019 and one of the accused persons was arrested on 11.07.2019, the other accused persons remained absconding and the respondent No. 2 surrendered as late as on 02.09.2019. So far the questions relating to the role assigned to the respondent No. 2 or about the doubt on the prosecution case, suffice it to observe at the present stage that the respondent No. 2 has specifically been named in the FIR as one of the assailants; and looking to the nature of the accusations and the nature of injuries, the prosecution case, prima facie, cannot be dubbed as fanciful or improbable.

18. For what has been noticed hereinabove, the impugned order is required to be set aside.

19. We have pondered over the question as to the order that needs to be passed in this matter finally. It is noticed that in the judgment and order dated 15.03.2021, this Court disapproved the order dated 15.02.2020 granting bail to the co-accused and directed him to surrender forthwith. More or less the same position would apply to the present case too. Herein, the order granting bail was passed on 03.12.2020 and the present matter was initially taken up for consideration on 12.07.2021. Even if one witness, that is, the present appellant, has already been examined, the other witnesses, including the eye-witnesses, are to be examined in the trial. In the given circumstances and in the interest of justice, we also deem it proper to leave it open for the respondent No. 2 to apply for bail afresh after surrendering and at an appropriate stage.

20. Accordingly and in view of above, this appeal is allowed; the impugned order dated 03.12.2020 is set aside with the requirement that the respondent No. 2 shall surrender forthwith. In the interest of justice, it is provided that if the respondent No. 2 applies for bail afresh after surrendering and at an appropriate stage, such an application may be considered on its own merits.

21. In the interest of justice, it is also made clear that we have not pronounced on the merits of the case either way and none of the observations herein, by itself, would operate prejudicial to the interests of the parties nor shall have any bearing on the final verdict by the Trial Court."

12. The aforesaid position equally applies to the present case too. The length or the period of custody of any of the co-accused persons has hardly any bearing on the subject-matter of these appeals. Similarly, even if stringent conditions have been imposed, the orders impugned cannot sustain themselves, for being hit by the dictum of this

Court. The other submissions about want of specification of the prosecution case are also of an uncertain nature and in any case, do not provide any distinction to the case of present respondents.

13. Of course, it remains a fact that the orders impugned were passed about more than two years before this date but then, the fact of the matter remains that these petitions were filed on 30.06.2021. This aspect of the matter has also acquired the attention of this Court, as noticed from paragraph '19' of the judgment and order dated 23.09.2022. In fact, this Court has also observed that even if the trial has proceeded and the present appellant has already been examined, yet the parity operating in the matter cannot be taken away. Of course, this Court has left it open for the said accused to apply for bail afresh after surrendering and at an appropriate stage.

14. Before concluding the matter, we may also take note of the fact that the learned counsel for the accused-respondent No. 2 has attempted to submit that these petitions are barred by limitation and no prayer for condonation of delay has been made. The submission does not stand in conformity with the record and in any case, even if there had been any delay, that does not take away the substance of the matter.

15. Accordingly and in view of the above, these appeals

succeed and are allowed; the impugned orders dated 26.08.2020 and 17.06.2020 are set aside with the requirement that the respective respondent No. 2 of these appeals shall surrender forthwith.

16. In the interest of justice, it is also provided that if they apply for bail afresh after surrendering and at an appropriate stage, such an application may be considered on its own merits.

17. In the interest of justice, it is also made clear that we have not pronounced on the merits of the case either way and none of the observations herein, by itself, would operate prejudicial to the interests of the parties nor shall have any bearing on the final verdict by the Trial Court.

18. All pending applications also stand disposed of.

.....J.
[DINESH MAHESHWARI]

.....J.
[BELA M. TRIVEDI]

NEW DELHI;
SEPTEMBER 30, 2022.