

2022 LiveLaw (SC) 222

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SANJIV KHANNA; BELA M. TRIVEDI, JJ.**

February 15, 2022

CRIMINAL APPEAL NO. 230 OF 2022
(Arising out of S.L.P.(Crl.) No. 245 of 2022)

JAMEEL AHMAD vs. MOHAMMED UMAIR MOHAMMAD HAROON & ANR.

Code of Criminal Procedure, 1973 - Section 436-439 - Bail - Grant of bail, though a discretionary order, requires such discretion to be exercised in a judicious manner and on the application of certain settled parameters. More heinous the crime, greater is the chance of rejection of bail, though the exercise also depends on the factual matrix of the matter - The Court, amongst others, must consider the prima facie view of whether the accused has committed the offence, nature of the offence, gravity, likelihood of the accused obstructing in any manner or evading the process of justice. Grant of bail draws an appropriate balance between public interest in the administration of justice and protection of individual liberty in a criminal case. The prima facie examination is on the basis of analysis of the record, and should not be confused with examination in detail of the evidence on record to come to a conclusive finding.

For Petitioner(s) Mr. Satyajit A. Desai, Adv. Mr. Siddharth Gautam, Adv. Mr. Satya Kam Sharma, Adv. Mr. Himanshu Sharma, Adv. Ms. Anagha S. Desai, AOR

For Respondent(s) Mr. R. Basant, Sr. Adv. Mr. Siddharth Aggarwal, Sr. Adv. Mr. Shreeyash U. Lalit, Adv. Mr. Aakash Gupta, Adv. Mr. Akshay Sahay, Adv. Ms. Raveena Lalit, Adv. Mrs. Pragya Baghel, AOR Mr. Anuj Gupta, Adv. Ms. Charu Narula, Adv. 5 Mr. Sachin Patil, AOR Mr. Rahul Chitnis, Adv. Mr. Aaditya A. Pande, Adv. Mr. Geo Joseph, Adv. Ms. Shwetal Shepal, Adv.

ORDER

Permission to file the special leave petition is granted.

Leave granted.

This appeal takes an exception to the order dated 06.09.2021 passed by the Nagpur Bench of the High Court of Judicature at Bombay in Criminal Application (BA) bearing No. 591 of 2021 whereby Mohammad Umair Mohammad Haroon (first respondent herein) has been granted bail in Crime No. 633/2020 registered with Police Station Barshitakli, District Akola, Maharashtra under Section 302 read with Section 34 of the Indian Penal Code and Sections 4/25 of the Arms Act.

We have heard learned counsel for the parties and also perused the impugned order.

We are clearly of the view that the High Court was wrong in granting bail to the first respondent. Grant of bail, though a discretionary order, requires such discretion to be exercised in a judicious manner and on the application of certain settled

parameters. More heinous the crime, greater is the chance of rejection of bail, though the exercise also depends on the factual matrix of the matter.

The reasoning given by the High Court does not take notice of the injuries mentioned in the Post-Mortem Report, which are 17 in number, and include incise stab injury on the left thigh. The Report discloses fracture dislocation of both side tibia and fibula bones, shaft in the middle. On dissection, evidence of diffuse hemorrhage in soft tissue muscles was also noticed.

As per the report, injuries No. 1 to 7, 12 & 16 were caused by hard and blunt impact. Injury No. 17 was individually sufficient in ordinary course of nature to cause death. Injuries No. 1 to 7 and 16 collectively were likely to cause death in ordinary course of nature. Further, death was due to hemorrhage and shock due to multiple injuries in a case of assault.

Learned counsel for the appellant and the State have drawn our attention that there are seven eyewitnesses, and as per the case of the prosecution, the first respondent, along with his brother, was caught and detained by police petrol team while they were fleeing on a motorcycle after the offence. At that time, the clothes worn by the first respondent had bloodstains. As per the charge sheet, the weapons of offence, namely, a knife and an iron-rod pipe, were recovered from the first respondent and his brother. On the aspect of common intention, it is to be noted that the occurrence had taken place in the market area and as per the police version the first respondent, his brother and father had all come prepared with knife and iron rods to commit the offence.

The argument raised by the learned counsel for the first 2 respondent that the Court had exercised discretion and this Court should not set aside the order granting bail, does not find favour with us. Though the first respondent at the relevant time was studying engineering, we cannot forget and have taken into consideration the gravity and nature of the offence which has led to loss of a life. ***Ram Govind Upadhyay v. Sudarshan Singh, 2002 (3) SCC 598*** sets out the relevant considerations for exercise of discretion, albeit, illustrative and not exhaustive, in the following words:

“4. ...(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the

normal course of events, the accused is entitled to an order of bail.”

Mahipal v. Rajesh Kumar alias Polia and Anr; 2020 (2) SCC 118 while accepting that the release of bail touches upon the liberty of an individual, observes, that the Supreme Court can interfere when the discretion exercised to grant bail is without due application of mind or in contravention to the directions and principles to be applied for the grant of bail. The Court, amongst others, must consider the prima facie view of whether the accused has committed the offence, nature of the offence, gravity, likelihood of the accused obstructing in any manner or evading the process of justice. Grant of bail draws an appropriate balance between public interest in the administration of justice and protection of individual liberty in a criminal case. The prima facie examination is on the basis of analysis of the record, and should not be confused with examination in detail of the evidence on record to come to a conclusive finding.

We, accordingly, allow the present appeal and set aside the impugned order. The bail granted to the first respondent is set aside. The first respondent shall surrender within five days from today failing which the police will take recourse to coercive steps to detain and arrest the first respondent in accordance with law.

We clarify that the observations made in this order for deciding the present appeal, would not be construed as observations on the merits of the matter. The Trial Court would independently apply its mind. In case of changed circumstances, it would be open to the first respondent to apply for bail. If application for bail is filed, it would be considered in accordance with law.

Pending application(s), if any, shall stand disposed of.

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