

2023 LiveLaw (SC) 45

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
KRISHNA MURARI; J., V. RAMASUBRAMANIAN; J.)
3rd JANUARY, 2023

CRIMINAL APPEAL NO. 120 OF 2023 (@ SLP (CRIMINAL) NO. 9756/2022)

Guddan @ Roop Narayan *versus* State of Rajasthan

Code of Criminal Procedure, 1973; Section 437-439, 389 - Excessive conditions cannot be imposed while granting bail/suspension of sentence - Conditions of bail cannot be so onerous that their existence itself tantamounts to refusal of bail. *Referred to Munish Bhasin vs State (Government of NCT of Delhi) (2009) 4 SCC 45 , Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 4 and Sandeep Jain vs. National Capital Territory of Delhi (2000) 2 SCC 66. (Para 9-16)*

Code of Criminal Procedure, 1973; Section 389 - Appellant was convicted by the Trial Court under Sections 307,323 and 341 IPC - High Court suspended the sentence, but imposed strict conditions of deposit of fine amount of Rs. 1,00,000/- along with a surety of Rs. 1,00,000/- and two bail bonds of Rs. 50,000/- each - Waiving these conditions, the Supreme Court observed: Excessive conditions imposed on the appellant, in practical manifestation, acted as a refusal to the grant of bail - Can the Appellant, for not being able to comply with the excessive requirements, be detained in custody endlessly? To keep the Appellant in jail, that too in a case where he normally would have been granted bail for the alleged offences, is not just a symptom of injustice, but injustice itself.

(Arising out of impugned final judgment and order dated 20-09-2022 in SBCRMSSOSA No. 942/2020 passed by the High Court of Judicature for Rajasthan at Jaipur)

For Petitioner(s) Mr. Abhishek Gupta, Adv.

For Respondent(s) Dr. Manish Singhvi, Sr. Adv. Mr. Arpit Parkash, Adv. Mr. Sandeep Kumar Jha, AOR

ORDER

1. The present Appeal has been filed by the Appellant herein against the impugned order dated 20.09.2022 passed by the High Court of Rajasthan in S.B. CA No. 360/2019. The Appellant herein is seeking for a waiver of the conditions imposed on the grant of suspension of sentence by the impugned order.

2. We had already on 03.01.2023 passed an order allowing the Appeal and waiving off the conditions of bail. We are now giving reasons for the same.

3. Briefly, the facts relevant for the purpose of this Appeal are as follows:-

3.1. It is alleged that the complainant, on the date of the incident, was assaulted on the head with an iron rod by the Appellant, causing the complainant to be admitted to the hospital.

3.2. The complainant then registered an FIR against the Appellant u/s 341 & 323 of the IPC. A chargesheet was subsequently filed against the Appellant u/s 341,323,325 and 307 IPC.

4. The Ld. Trial Court, vide order dated 20.02.2019 convicted the appellant u/s 307,323 and 341 of the IPC on grounds of the recoveries made, the eyewitnesses to

the incident and the medical evidence. The Appellant was thus sentenced to 10 years Imprisonment and fine of Rs.1,00,000- with default sentence u/s 307 along with 1 year Imprisonment and fine of Rs. 1,000- with default sentence u/s 323 and a 1 month Imprisonment and a fine of Rs. 500/- u/s 341 of the IPC.

5. The Appellant then preferred an Appeal before the High Court, and during the pendency of the Appeal preferred an Application for Suspension of Sentence.

6. The High Court, vide impugned order dated 20.09.2022 suspended the sentence of the Appellant, however imposed strict conditions of deposit of fine amount of Rs. 1 ,00,000/- along with a surety of Rs. 1,00,000/- and two bail bonds of Rs. 50,000/- each.

7. These conditions imposed by the High Court for the grant of suspension of sentence are being challenged in the present Appeal.

8. We have heard the arguments of both the parties in detail.

9. This Court, time and time again has held that jail is the exception and grant of bail is the rule, and in such a scenario, the conditions imposed on bail must not be unreasonable.

10. In the case of ***Munish Bhasin and Others Vs. State (Government of NCT of Delhi) and Another (2009) 4 SCC 45***, the Appellant had approached the Supreme Court in Appeal against an order of the High Court that had imposed onerous conditions for grant of Anticipatory Bail in a Domestic Violence case. This Hon'ble Court in its reasoning held that harsh and excessive conditions cannot be imposed while granting bail, the relevant observations of this Court are reproduced hereunder:

“10. It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High Court nor the Sessions Court would be justified in imposing freakish conditions. There is no manner of doubt that the court having regard to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code. However, the accused cannot be subjected to any irrelevant condition at all.

12. While imposing conditions on an accused who approaches the court under Section 438 of the Code, the court should be extremely chary in imposing conditions and should not transgress its jurisdiction or power by imposing the conditions which are not called for at all. There is no manner of doubt that the conditions to be imposed under Section 438 of the Code cannot be harsh, onerous or excessive so as to frustrate the very object of grant of anticipatory bail under Section 438 of the Code.”

11. In the case of ***Sanjay Chandra Vs. Central Bureau of Investigation (2012) 1 SCC 40***, while hearing a bail Application in a case of an alleged economic offence, this court held that the object of bail is neither punitive nor preventative. It was observed as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content

and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.”

12. Further, in the case of **Sandeep Jain Vs. National Capital Territory of Delhi (2000) 2 SCC 66**, this Court, while hearing a bail application held that conditions for grant of bail cannot become so onerous that their existence itself is tantamount to refusal of bail. This Court held as under:

“We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs 2 lakhs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs 2 lakhs? If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to the legal remedies provided by law. Similarly if the Court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the Court could have directed the appellant to substitute him with another surety. But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge-sheeted by the police.”

13. In the present case, the Appellant has been granted bail by the High Court. However, while granting bail, the High Court has imposed the excessive conditions of a deposit of fine amount of Rs.1,00,000/- along with a surety of another Rs.1,00,000/- and two further bail bonds of Rs.50,000/- each.

14. We are unable to appreciate the excessive conditions of bail imposed by the High Court. The fact that bail has been granted to the Appellant herein is proof enough to show that he is not to be languishing in jail during the pendency of the case.

15. While bail has been granted to the Appellant, the excessive conditions imposed have, in-fact, in practical manifestation, acted as a refusal to the grant of bail. If the Appellant had paid the required amount, it would have been a different matter. However, the fact that the Appellant was not able to pay the amount, and in default thereof is still languishing in jail, is sufficient indication that he was not able to make up the amount.

16. As has been stated in the Sandeep Jain case (supra), the conditions of bail cannot be so onerous that their existence itself tantamounts to refusal of bail. In the

present case, however, the excessive conditions herein have precisely become that, an antithesis to the grant of bail.

17. Any other accused in a similar circumstance at this point would not be in custody, however, the present Appellant, because of the conditions imposed, has not been able to leave the languish of jail. Can the Appellant, for not being able to comply with the excessive requirements, be detained in custody endlessly? To keep the Appellant in jail, that too in a case where he normally would have been granted bail for the alleged offences, is not just a symptom of injustice, but injustice itself.

18. Ld. Sr. Counsel Manish Singhvi, appearing on behalf of the State of Rajasthan on the basis of instructions has also very fairly conceded to the point that the conditions of bail are excessive and the appellant is in no financial condition to satisfy the conditions. We deeply appreciate his role as an officer of the court for his unbiased attitude in the matter.

19. We, therefore, allow this Appeal and set out to modify the bail order granted by the High Court. The Bail order is to continue, however, the conditions set for the grant of Bail stands waived off.

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