

[2023 LiveLaw \(SC\) 560](#) : [2023 INSC 642](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

B.V. NAGARATHNA; J., PRASHANT KUMAR MISHRA; J.

24th JULY, 2023.

CRIMINAL APPEAL NO. 2078 - 2080 OF 2023 (@ SLP (CRL. NO. 3445, 3446 & 8935 OF 2023)
(@DIARY NO(S).40947 OF 2022)

ROHIT BISHNOI versus THE STATE OF RAJASTHAN & ANR.

Code of Criminal Procedure, 1973; Section 439 – Bail - The primary considerations which must be placed at balance while deciding the grant of bail are: (i) The seriousness of the offence; (ii) The likelihood of the accused fleeing from justice; (iii) The impact of the release of the accused on the prosecution witnesses; (iv) Likelihood of the accused tampering with evidence. (Para 18)

Code of Criminal Procedure, 1973; Section 439 – Bail - An order granting bail in a mechanical manner, without recording reasons, would suffer from the vice of non-application of mind, rendering it illegal. (Para 19)

Constitution of India, 1950; Article 136 - Code of Criminal Procedure, 1973; Section 439 – Bail - An order granting bail to an accused, if passed in a casual and cryptic manner, *de hors* reasoning which would validate the grant of bail, is liable to be set aside. (Para 20, Relied: *Manoj Kumar Khokhar v. State of Rajasthan*, [2022 LiveLaw \(SC\) 55](#))

Code of Criminal Procedure, 1973; Section 439 – Bail - While considering an application for grant of bail, a *prima-facie* conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis à vis the offence/s alleged against an accused. (Para 22)

For Petitioner(s) Mr. Rajan Chawla, AOR

For Respondent(s) Mr. Asad Alvi, Adv. Mr. Milind Kumar, AOR Ms. Saba A.k. Patel, Adv. Mr. Hamid Irfan, Adv. Mr. B. S. Rajesh Agrajit, Adv. Mr. Rajesh Chand, Adv. Ms. Jyoti Rana, Adv. Ms. Priya Nagar, Adv. Ms. Meetu Goswami, Adv. Mr. Siddharth Goswami, Adv. Mr. D. K. Devesh, AOR Mr. Nishant Bishnoi , AOR

J U D G M E N T

NAGARATHNA, J.

Delay condoned.

Leave granted.

3. These appeals have been preferred by the informant-appellant assailing the judgments dated 14 February, 2022 and 02 February, 2023 passed by the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Miscellaneous Bail Application Nos. 16016 of 2021, 4265 of 2022 and 4823 of 2022, whereby, bail has been granted to the respondents-accused herein, namely, Vikas Vishnoi, Budharam and Rajendra Bishnoi respectively, in connection with First Information Report (“F.I.R.” for short) No. 134 of 2020 registered at Police Station Mandore, District Jodhpur, Rajasthan for offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC” for the sake of brevity) and Section 3 read with Sections 25 and 27 of the Arms Act, 1959.

4. The facts in a nutshell are that the appellant is the brother of one of the deceased, namely, Vikash Panwar and is the informant who lodged F.I.R. No. 134 of 2020 against four persons, including three of the respondents-accused herein.

4.1. F.I.R. No. 134 of 2020 dated 18 May, 2020 is stated to have been filed by the appellant herein between 2.45 hours and 2.55 hours in the night stating that his elder brother, Vikash Panwar, aged 25 years at the time had been in an extra marital live-in-relationship with Nirma @ Gudia, since three months, who was also married to Shrawan Jani and had two children from the said marriage. That unhappy about the said extra marital live-in-relationship, the parents and parents in-law of Nirma had been threatening to kill appellant's brother, Vikash Panwar.

4.2. That Budharam and Vikas Vishnoi, Nirma's brothers, Shrawan Jani, Nirma's husband and Ram Kishor, Nirma's brother-in-law were threatening the informant's brother by way of calls and WhatsApp messages.

4.3. That on 17 May, 2020 at around 12.15 p.m., the informant's nephew informed him telephonically that a video of his brother, Vikash getting shot was being circulated on social media. The incident was stated to have occurred at Nayapura Mandore area and on receiving the said information, the informant and his father reached the said area and found Vikash Panwar lying on the ground, dead, with blood oozing out from around his ribs.

4.4. That upon inquiry, the informant got to know that the four accused hereinabove named had come on two motorcycles and dragged Vikash who was purchasing vegetables. Thereafter, they had shot at him, causing his death.

5. Earlier, on 18 February, 2020, Meera Devi had filed F.I.R. No. 81 of 2020 in Police Station Bilara, Jodhpur stating therein that the deceased-Vikash Panwar had kidnapped her daughter-in-law, Nirma.

6. On 24 February, 2020, Nirma filed F.I.R. No. 88 of 2020 against her brother-in-law and parents-in-law for offences punishable under Sections 498A and 376 of the IPC, stating therein that her brother-in-law repeatedly raped her and that she was being subjected to cruelty in her matrimonial household.

7. In connection with F.I.R. No. 134 of 2020, respondent-accused, Budharam was arrested on 22 May, 2020 while respondents-accused, Rajendra Bishnoi and Vikas Vishnoi were arrested on 30 May, 2020 and remanded to judicial custody.

8. After conducting the investigation, the police filed a chargesheet before the Metropolitan Magistrate, Mahanagar, Jodhpur, on 19 August, 2022 against eight accused including the respondents-accused herein. Respondent-accused, Budharam was charged for offences punishable under Sections 302 and 120B of the IPC and Section 3 read with Sections 25 and 27 of the Arms Act, while respondents-accused, Rajendra Bishnoi and Vikas Vishnoi were charged for offences under Sections 302 and 120B of the IPC.

9. Respondent-accused, Vikas Vishnoi preferred an application seeking regular bail before the Court of the Additional District and Sessions Judge, Mahanagar, Jodhpur. The same was dismissed by an Order dated 10 November, 2021.

10. Application seeking regular bail filed by the respondent-accused, Vikas Vishnoi before the High Court, under Section 439 of the Code of Criminal Procedure, 1973, was dismissed as withdrawn by an Order dated 16 April, 2021.

11. Thereafter, respondent-accused, Vikas Vishnoi filed a second bail application, being S.B. Criminal Miscellaneous Bail Application Nos. 16016 of 2021, before the High Court.

By the impugned judgment dated 14 February, 2022, the High Court granted him bail in connection with F.I.R. No. 134 of 2020 registered at Police Station Mandore, District Jodhpur, Rajasthan.

12. Subsequently, the High Court *vide* impugned judgment dated 02 February, 2023 allowed S.B. Criminal Miscellaneous Bail Nos. 4265 of 2022 and 4823 of 2022 and thereby granted bail to the respondents accused herein, namely, Budharam and Rajendra Bishnoi respectively. Being aggrieved, the appellant-informant has preferred these appeals before this Court.

13. We have heard Sri Pradeep Chhindra, learned counsel appearing for the appellant, Sri B.S. Rajesh Agrajit, learned counsel appearing for the State and Sri Asad Alvi, Sri Hamid Irfan and Ms. Srishti Prabhakar, learned counsel appearing for the respondents-accused.

14. Learned counsel for the appellant at the outset submitted that the impugned judgments have been passed without considering the facts as to the active involvement of the accused and the heinous nature of the crimes in which the accused have been involved. That the High Court has enlarged the respondents-accused on bail, contrary to the settled principles of law and judgments of this Court.

14.1. It was further submitted that the High Court has not assigned the reasons for grant of bail in the instant case whereas the respondents accused have allegedly committed heinous crimes which could result in life imprisonment or even death penalty. According to the learned counsel for the appellant, the High Court in a very cryptic order, *de hors* any reasoning, has granted bail to the respondents-accused.

14.2. It was contended that the High Court failed to consider the overwhelming material that would point towards the guilt of the accused. Instead, the High Court referred only to the testimony of one hostile witness and on the basis thereof exercised its discretion to grant bail in an erroneous and perverse manner.

14.3. Sri Pradeep Chhindra next contended that while considering an application for grant of bail, the Court's exercise of discretion must be guided by reasons to be recorded in the Order granting bail. That the Court must have due regard to the seriousness of the allegations and the nature of punishment that would follow conviction for the offences alleged. In support of his submission, reliance has been placed on the decisions of this Court in ***Brijmani Devi vs. Pappu Kumar- [(2022) 4 SCC 497]*** and ***Deepak Yadav vs. State of Uttar Pradesh- [(2022) 8 SCC 559]***.

15. Of the same tenor were the submissions of Sri B.S. Rajesh Agrajit, learned counsel appearing for the State. It was submitted that the investigating officers had collected overwhelming evidence in the form of statements of eye-witnesses and other witnesses who identified the accused in pictures and in the CCTV footage wherein they were seen escaping the crime scene. That the police also recovered murder weapons, phones on which information was transmitted, reconnaissance was done, call tower records, bikes on which the escape was planned etc. That the chargesheet includes pictorial evidence of the respondents-accused escaping from the scene of the crime. That the High Court overlooked such clear and cogent evidence collected during the course of investigation, which, in the very least would *prima-facie* point towards the guilt of the accused and erroneously proceeded to grant bail.

15.1. It was urged that discretion in matters concerning grant of bail must be exercised judiciously, taking into account the particular circumstances of each case. That a decision as to whether or not to grant bail must be taken having due regard to factors such as the

nature and gravity of the allegations, the strength of the evidence against the accused, the potential severity of the punishment that would follow conviction, the character of the accused, the likelihood of the accused absconding, the possibility of the accused influencing witnesses, the broader public interest and other relevant factors. That where the prosecution has been able to produce prima-facie evidence in support of the charge(s) against the accused, it would not be a fit case for grant of bail.

15.2. It was further submitted that the accused were not only involved in a conspiracy to kill the deceased, Vikash Panwar, but also actively participated in his murder. That having regard to the gravity of the offences alleged against the accused, the bail applications ought not to have been allowed.

With the aforesaid submissions, it was prayed that the present appeals be allowed, the impugned judgments be set aside and the bail bonds of the respondents-accused be cancelled.

16. *Per contra*, learned counsel for the respondents-accused, supported the impugned judgments and submitted that the same do not suffer from such perversity as would justify interference by this Court.

16.1. It was further submitted that no matter how serious the nature of the alleged offences may be, the accused shall be entitled to be released on bail if the competent court is of the *prima-facie* view that the accused was/were not involved in the alleged crime.

16.2. That the conclusion of trial in connection with F.I.R. No. 134 of 2020, would take a considerable amount of time and it would be against the interest of justice and the fundamental value of liberty to keep the accused in custody for such an indefinite period. Therefore, the High Court was right in enlarging the accused on bail.

16.3. It was contended that there was no justifiable cause for the apprehension that the respondents-accused would influence the witnesses. That when the statement of prosecution witness, Nirma who turned hostile, was recorded by the Trial Court, the respondents-accused were in judicial custody. Therefore, there is no way that they could have influenced the said witness to turn hostile.

16.4. That the respondents-accused had no intention to misuse the liberty granted to them and this was evidenced by the fact that there has been no allegation against them as to non-compliance or abuse of conditions of bail.

16.5. Learned counsel for respondent-accused, Vikas Vishnoi submitted that the only role ascribed to the said accused in the alleged crime is that he was riding on a motorcycle together with a co-accused at the time of incident. That no allegation has been made as to the said accused inflicting any injuries to the deceased.

16.6. As regards the allegations against respondent-accused, Rajendra Bishnoi to the effect that he hit the deceased on his head with the butt of the pistol, it is submitted that the same were baseless and there was no evidence to prove the same. So also, the allegations against respondent-accused, Budharam to the effect that he had fired bullet shots at the deceased.

With the aforesaid submissions, it is prayed that the present appeals be dismissed as being devoid of merit and the impugned judgments be affirmed.

17. Having regard to the contention of the learned counsel for the appellant that the impugned judgments granting bail to the respondents-accused are bereft of any reasoning and they are cryptic and bail has been granted in a casual manner, we extract those

portions of the impugned judgments dated 14 February, 2022 and 02 February, 2023 passed by the High Court which provides the “reasoning” of the Court for granting bail, as under :

Impugned judgment dated 14 February, 2022

“Heard learned counsel for the parties.

The prosecution witness Nirma @ Gudiya, in her police statement, has identified the petitioner and other co-accused persons in the CCTV footage, but in her court statement, she has not supported the prosecution story and turned hostile. So far as witness Rohit is concerned, I have gone through his police statement and in those statement, he has simply stated that he was informed that the incident is carried out by the petitioner and other co-accused persons. Having regard to the totality of the facts and circumstances of the case, without expressing any opinion on the merits of the case, I deem it just and proper to grant bail to the petitioner(s) under Section 439 Cr.P.C. Accordingly, this/these second bail application(s) filed under Section 439 Cr.P.C. is/are allowed and it is directed that petitioner(s) – Vikash Vishnoi S/o Hanuman Ram shall be released on bail in connection with FIR No.134/2020 of Police Station Mandore, District Jodhpur provided he/she/they execute(s) a personal bond in the sum of Rs.50,000/- with two sound and solvent sureties of Rs.25,000/- each to the satisfaction of learned trial court for his/her/their appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.”

Impugned judgment dated 02 February, 2023

“Having regard to the totality of the facts and circumstances of the case, without expressing any opinion on the merits of the case, I deem it just and proper to grant bill to the accused petitioners under Section 439 Cr.P.C.

Accordingly, the bail applications filed under Section 439 Cr.P.C. are allowed and it is directed that petitioners **Raju @ Rajendra Bishnoi S/o of Pukhraj @ Papparam and Budharam S/o Kojaram** shall be released on bail in connection with F.I.R. No.134/2020, registered at Police Station Mandore, District Jodhpur provided each of them executes a personal bond in a sum of Rs.50,000/- with two sound and solvent sureties of Rs.25,000/- each to the satisfaction of learned trial court for their appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.”

18. This Court has, on several occasions discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (i) The seriousness of the offence; (ii) The likelihood of the accused fleeing from justice; (iii) The impact of release of the accused on the prosecution witnesses; (iv) Likelihood of the accused tampering with evidence. While such a list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, *vide Gudikanti Narasimhulu vs. Public Prosecutor, High Court of Andhra Pradesh- [(1978) 1 SCC 240] ; Prahlad Singh Bhati vs. NCT, Delhi– [(2001) 4 SCC 280] ; Anil Kumar Yadav vs. State (NCT of Delhi) - [(2018) 12 SCC 129].*

19. This Court has also ruled that an order granting bail in a mechanical manner, without recording reasons, would suffer from the vice of non-application of mind, rendering it illegal, *vide Ram Govind Upadhyay vs. Sudarshan Singh- [(2002) 3 SCC 598]; Prasanta Kumar Sarkar vs. Ashis Chaterjee – [(2010) 14 SCC 496]; Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli)– [(2021) 6 SCC 230] ; Brijmani Devi vs. Pappu Kumar (supra).*

20. Reference may also be made to recent decisions of this Court in *Manoj Kumar Khokhar vs. State of Rajasthan– [2022 SCC OnLine SC 30]* and *Jaibunisha vs.*

Meharban– [(2022) 5 SCC 465], wherein, on engaging in an elaborate discussion of the case law cited *supra* and after duly acknowledging that liberty of individual is an invaluable right, it has been held that an order granting bail to an accused, if passed in a casual and cryptic manner, *de hors* reasoning which would validate the grant of bail, is liable to be set aside by this Court while exercising power under Article 136 of the Constitution of India.

21. The Latin maxim “*cessante ratione legis cessat ipsa lex*” meaning “reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself,” is also apposite.

22. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail, courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing on the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a *prima facie* conclusion. While considering an application for grant of bail, a *prima-facie* conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction *vis à vis* the offence/s alleged against an accused.

23. We have extracted the relevant portions of the impugned order above. At the outset, we observe that the extracted portions are the only portions forming part of the “reasoning” of the High Court while granting bail. As noted from the aforesaid judgments, it is not necessary for a Court to assign elaborate reasons or engage in a roving inquiry as to the merits of the prosecution’s case while granting bail, particularly, when the trial is at the initial stages and the allegations against the accused would not have been crystallised as such. Elaborate details cannot be recorded so as to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an Order on an application for grant of bail. However, the Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering with the evidence; criminal antecedents of the accused; and a *prima-facie* satisfaction of the Court in support of the charge against the accused.

24. In view of the aforesaid discussion, we shall now consider the facts of the present case. The allegations against respondents-accused as well as the contentions raised at the Bar have been narrated *supra*. On a consideration of the same, the following aspects of the case would emerge:

a) The allegations against respondent-accused, Budharam is for offences under Sections 302 and 120B of the IPC and Section 3 read with Sections 25 and 27 of the Arms Act, while against respondents-accused, Rajendra Bishnoi and Vikas Vishnoi the allegations are for offences under Sections 302 and 120B of the IPC.

b) The allegation against the respondents-accused is not only that they were involved in a conspiracy to kill the deceased, Vikash Panwar, but also that they actively participated in his murder. The alleged incident is stated to be an instance of honour killing.

c) A perusal of the chargesheet dated 19 August, 2022 would reveal that specific roles have been ascribed to each of the respondents-accused in the alleged incident. It is alleged

that respondent-accused Rajendra Bishnoi tugged at the collar of the deceased from behind, so as to drag him down the stairs on which he was standing, after which respondent-accused Vikas Vishnoi caught hold of the deceased, thereby, enabling co-accused Raju to hit him on his head with the butt of a country-made pistol. Having incapacitated the deceased in the said manner, Budharam was able to fire bullet shots on the chest and back of the deceased, resulting in his death.

d) In the present case, it cannot be said that the accusations against the respondents-accused are *prima-facie* wholly false, frivolous or vexatious in nature, so as to justify grant of bail. We observe, while not expressing any opinion on the merits of the case, that the prosecution has brought on record adequate material that would *prima-facie* point towards the guilt of the accused. Details as to the manner in which the deceased, Vikash Panwar and Nirma were traced by the accused, the acts of reconnaissance that were carried out by the accused before the alleged fateful incident and the manner in which each of the accused participated in the alleged crime have been brought on record. Therefore, we are not inclined to hold at this juncture that the prosecution has not established a *prima-facie* case as to the guilt of the accused.

e) One of the prosecution witnesses, namely Nirma, turned hostile. Therefore, in the absence of any evidence as to the circumstances under which she turned hostile, we cannot rule out the possibility of the respondents-accused influencing other witnesses, tampering with the evidence, if they continue to remain on bail.

f) The present case is not one where the accused have been detained in custody for an inordinate amount of time as under-trials.

g) The High Court of Rajasthan, in the impugned orders dated 09 September, 2019 and 17 October, 2019 has not considered the aforesaid aspects of the case in the context of the grant of bail. The High Court has been swayed by the fact that one of the prosecution witnesses, namely, Nirma has turned hostile which is not an aspect that must be taken into account while considering an application for bail.

25. While we are conscious of the fact that a Court considering the grant of bail must not engage in an elaborate discussion on the merits of the case, we are of the view that the High Court while passing the impugned orders has not taken into account even a single material aspect of the case. Instead, the High Court referred only to the testimony of one hostile witness in the trial and on the basis thereof, exercised its discretion to grant bail in an erroneous manner. The High Court has lost sight of the aforesaid vital aspects of the case and granted bail to the respondents-accused by passing very cryptic and casual orders, *de hors* cogent reasoning.

26. Having considered the aforesaid facts of the present case in light of the law cited above, we do not think that this case is a fit case for the grant of bail to the respondents-accused, given the seriousness of the allegations against them. We find that the High Court was not right in allowing the applications for bail filed by the respondents-accused. Hence, the impugned judgments dated 14 February, 2022 and 02 February, 2023 passed by the High Court of Rajasthan at Jodhpur are set aside. The appeals are allowed.

27. The respondents-accused are on bail. Their bail bonds stand cancelled and they are directed to surrender before the concerned jail authorities within a period of two weeks from today.