Supreme Court of India
Ram Pratap Yadav vs Mitra Sen Yadav & Anr on 20 November, 2002
Author: R Lahoti
Bench: R.C. Lahoti, Brijesh Kumar.

CASE NO.:
Appeal (crl.) 1209 of 2002

PETITIONER:
Ram Pratap Yadav

RESPONDENT:
Mitra Sen Yadav & Anr.

DATE OF JUDGMENT: 20/11/2002

BENCH:
R.C. LAHOTI & BRIJESH KUMAR.

JUDGMENT:

J U D G M E N T WITH CRIMINAL APPEAL NO. 1210 OF 2002 [Arising out of S.L.P.(Crl.) No. 1266 of 2002] R.C. Lahoti, J.

Leave granted in both the SLPs.

Mitra Sen Yadav, the respondent No. 1, is accused in Crime No. 238/01 under Sections 419, 420, 467, 468, 471, 409 IPC of P.S. Tarun, District Faizabad. He was arrested and lodged in District Jail, Faizabad. He moved an application for being released on bail. The prayer for bail was vehemently opposed. By order dated 12.10.2001, the learned Sessions Judge directed the application for bail to be rejected. The order is a detailed one setting out the facts and circumstances of the case, the previous history, and antecedents of the accused-applicant. The order also takes note of an apprehension expressed on behalf of the State that the release of the respondent No. 1 on bail may adversely influence the investigation and witnesses may be adversely influenced or intimidated.

Feeling aggrieved by the rejection of bail at the hands of the Sessions Court, the respondent No. 1 moved the High Court under Section 439 of Cr.P.C. By order dated 08.11.2001, the High Court has allowed the prayer of the respondent No. 1 to be enlarged on bail. The order is a brief one and the only reason assigned for releasing the respondent No.1 on bail is "It is a fit case for bail".

The complainant and the State of UP have filed these two appeals by special leave feeling aggrieved by the order of the High Court directing the release of respondent No. 1 on bail.

We have heard the learned counsel for the complainant/appellant, the learned counsel for the State of UP, as also the learned counsel for the accused respondent No.1. Having heard, we are of the opinion that the impugned order enlarging the accused on bail cannot be sustained and has to be set aside in the facts and circumstances of the case.

A few undisputed facts may be noticed. Out of the several offences alleged to have been committed by the respondent No. 1, those under Section 409 and 467 IPC are punishable with imprisonment for life or imprisonment for 10 years and fine. In Sessions Trial No. 141/66 by judgment dated 06.12.1966, the respondent No. 1 was held guilty of having committed an offence punishable under Section 302 IPC and sentenced to imprisonment for life, which conviction was maintained by the High Court, as also by this Court. However, in the year 1998, the respondent No. 1 was released consequent upon remission having been granted to him. The counter affidavit filed on behalf of the State of UP on the affidavit of Station Officer, P.S. Tarun, Faizabad, sets out a list of 19 crimes registered against the respondent No. 1 wherein he is involved and some of them are quite serious, punishable with long terms of imprisonment.

The learned counsel for the appellant has submitted by inviting attention of the Court to the provisions of Section 437 Cr.P.C. that a person accused of or suspected of the commission of any non-bailable offence shall not be released on bail if he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for 7 years or more, unless special reasons for enlarging the accused on bail are available and recorded in writing. The learned counsel for the respondent No. 1 submitted that the power of Sessions Court and High Court to enlarge the accused on bail under Section 439 Cr.P.C. are very wide and are not fettered by the provisions of Section 437 Cr.P.C.. Be that as it may, it cannot be denied that previous conviction of an accused for a heinous offence punishable with imprisonment for life, his involvement in other crimes and the quantum of punishment for the offences in which the applicant is seeking bail are all relevant factors to which the Court should consciously advert while taking a decision in the matter of enlargement on bail. A prayer for bail having been rejected by the Sessions Court although the High Court while exercising its jurisdiction under Section 439 Cr.P.C. is not acting as a court of appeal or court of revision over the order of the Sessions Court, nevertheless, the High Court should keep in mind, while hearing the application for bail, the factum of the prayer having been rejected by the Sessions Court and the reasons therefor expressly set out in the order of the Sessions Court. The order of the High Court, howsoever brief it may be, should make it appear that the High Court while forming opinion on prayer for bail was conscious of the reasons for rejection of prayer for bail as assigned by the Sessions Court.

A perusal of the impugned order of the High Court does not show the above said requirement having been satisfied. The High Court has not said a word as to why the reasons assigned by the Sessions Court for rejecting the prayer for bail need to be ignored or are not relevant or why the High Court was inclined to exercise its power favourably to the accused applicant in spite of the availability of grounds to the contrary set out in the order of the Sessions Court. Independently of the order of rejection passed by the Sessions Court, the High Court may grant bail to an accused person, yet it would be sound exercise of discretionary jurisdiction of High Court if the order of the High Court reflects that the High Court had in mind the reasons assigned by the Sessions Court for refusing bail. The impugned order of the High Court suffers from this infirmity.

The impugned order of the High Court granting bail to the accused respondent No. 1 cannot be sustained and is set aside. The respondent No. 1 shall forthwith surrender to custody. However, we clarify that the right of the accused respondent No. 1 to apply and seek bail afresh is not taken away,

which prayer if made shall be dealt with and disposed of on its own merits consistently with the observations made hereinabove.

The appeals are allowed.