Supreme Court of India
Ram Govind Upadhyay vs Sudarshan Singh & Ors on 18 March, 2002
Author: Banerjee
Bench: Umesh C. Banerjee, Y.K. Sabharwal

CASE NO.:
Appeal (crl.) 381-382 of 2002

PETITIONER:
RAM GOVIND UPADHYAY

Vs.

RESPONDENT:
SUDARSHAN SINGH & ORS.

DATE OF JUDGMENT: 18/03/2002

BENCH:
Umesh C. Banerjee & Y.K. sabharwal

JUDGMENT:

Banerjee, J.

Leave granted.

While liberty of an individual is precious and there should always be an all round effort on the part of Law Courts to protect such liberties of individuals but this protection can be made available to the deserving ones only since the term protection cannot by itself be termed to be absolute in any and every situation but stand qualified depending upon the exigencies of the situation. It is on this perspective that in the event of there being committal of a heinous crime it is the society that needs a protection from these elements since the latter are having the capability of spreading a reign of terror so as to disrupt the life and the tranquility of the people in the society. The protection thus to be allowed upon proper circumspection depending upon the fact situation of the matter. It is in this context the observations of this court in Shahzad Hasan Khan v. Ishtiaq Hasan Khan & Anr. (1987 (2) SCC 684) seem to be rather apposite. This Court observed in Shahzad Hasan Khan (supra) as below :-

"Had the learned Judge granted time to the complainant for filing counter-affidavit correct facts would have been placed before the court and it could have been pointed out that apart from the inherent danger of tampering with or intimidating witnesses and aborting the case, there was also the danger to the life of the main witnesses or to the life of the accused being endangered as experience of life has shown to the members of the profession and the judiciary, and in that event,

the learned Judge would have been in a better position to ascertain facts to act judiciously. No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the court. Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case."

Grant of bail though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for Bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture though however, the same are only illustrative and nor exhaustive neither there can be any. The considerations being:

(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 accepted 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.

A recent decision of this Court in Prahlad Singh Bhati v. NCT, Delhi & Anr. (2001 (4) SCC 280) lends concurrence to the observations as above.

Turning attention to the factual score, it is stated that the appellant's brother, one Amar Nath Upadhyay (since deceased), was a candidate contesting the election for the post of Pradhan in Budhepur Gram Panchayat along with one Ravindra Nath Singh. While the polling was in progress on 23rd June, 2000, there were said to be some scuffles which resulted in the obstruction of polling process thrice by booth so-called jamming/booth capturing resulting in forcible taking up of ballot papers from the voters and said to be casting the same in favour of one particular candidate. It has been stated that as and when informant came to the booth in order to cast his vote, there was stated to be definite obstruction and resultantly a hue and cry and thus alleged scuffles were had and on hearing the cries of the informant, Amar Nath Upadhyay (since deceased) said to have rushed for the informant's rescue and the torture thereafter fell on to the candidate, which resulted in the death of Amar Nath Upadhyay. There is thus an allegation of booth capturing as also that of a refusal to permit the voters to vote. The First Information Report lodged recorded offence under Section 302 IPC along with other charges and it is on this score that the private respondents in these appeals were arrested. Applications for bail were moved before the trial Court but the same did not meet with any success. Even the High Court did not lend any support to the application. Subsequent bail applications were also filed on behalf of accused persons before the Sessions Judge, Chandauli, which however stood rejected upon recording an observation that the prosecution case prima facie stands supported by ocular testimony of the witnesses as also the post-mortem report and against such an order of rejection, the co- accused moved the High Court for the grant of bail being Crl. Misc. Bail application No.17697 of 2000. The records further depict, however, that between 4th and 6th December, 2000, the witnesses in the matter were said to have been threatened and assaulted by reason wherefor a FIR under Sections 323 and 504 IPC was registered at the Police Station on 6th December, 2000 as M.C.R. No.91 of 2000. The police after completing the investigation has also submitted the charge-sheet before the Chief Judicial Magistrate but no committal has taken place as yet, since the co-accused who had been granted bail, were not attending the Court of Chief Judicial Magistrate by reason wherefor bailable warrants against them were issued and it is only thereafter that the accused persons appeared before the Sessions Judge. The two petitions for bail as noticed above, by Sudarshan Singh and Kaushal Singh came up for hearing before the High court on 3rd May, 2001, whereupon the bail was granted to both the accused persons and thus the application for cancellation of bail which however, resulted in an order of rejection and hence the appeals before this Court.

While it is true that availability of over-whelming circumstances is necessary for an order as regards the cancellation of a bail order, the basic criterion, however, being interference or even an attempt to interfere with the due course of administration of justice and/or any abuse of the indulgence/privilege granted to the accused. The contextual facts depict and as noticed hereinbefore that the incident occurred at the time when the election was going on and the murder was said to have been committed in the broad day light by reason of interference of the deceased when the informant was prohibited from casting his vote. The situation is rather grave and having regard to the same, the High Court on 29th August, 2000 refused the application for bail. Undoubtedly, considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other, but in the event of non- consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on to the High Court to explicitly state the reasons as

to why the sudden departure in the order of grant as against the rejection just about a month ago. The subsequent FIR is on record and incorporated therein are the charges under Sections 323 and 504 IPC in which the charge-sheet have already been issued the Court ought to take note of the facts on record rather than ignoring it. In any event, the discretion to be used shall always have to be strictly in accordance with law and not de-hors the same. The High Court thought it fit not to record any reason far less any cogent reason as to why there should be a departure when in fact such a petition was dismissed earlier not very long ago. The consideration of the period of one year spent in jail cannot in our view be a relevant consideration in the matter of grant of bail more so by reason of the fact that the offence charged is that of murder under Section 302 IPC having the punishment of death or life imprisonment it is a heinous crime against the society and as such the Court ought to be rather circumspect and cautious in its approach in a matter which stands out to be a social crime of very serious nature.

In our view, the High Court has committed a manifest error in the matter of grant of bail when public tranquility has been stated to be disturbed on the election day and when there is an obstruction for the exercise of a right guaranteed under the Constitution and when there is an existence of crime against the society at large. Irrespective of different factors to be taken note of in regard to the cancellation of the grant of bail, in our view interest of justice seem to be over-whelmingly in favour of the appellant herein in the matter of cancellation of the bail. The elder brother has been brutally murdered and the proceeding is pending before the Sessions Judge. It is during the period when the accused persons were enlarged on bail that another FIR was recorded and charge-sheet having been filed, the Court ought to have taken a serious note of these factual details. Tampering with the evidence and threatening of the witnesses are two basic grounds for cancellation of bail both these two factors stand alleged and by reason of subsequent filing of charge-sheet therein, there should have been some mention of it in the order for grant of bail. The factum of the second charge-sheet has been omitted in its entirety.

In that view of the matter, these appeals succeed. The order of the High Court stands set aside and quashed. The bail order as granted by the High Court stands cancelled and the private respondents be re-arrested forthwith.

..J.

(Umesh C. Banerjee) ..J.

(Y.K. Sabharwal) March 18, 2002.