

BRIJ NANDAN JAISWAL

MUNNA @ MUNNA JAISWAL & ANR.
(Criminal Appeal No. 2087/2008)

DECEMBER 19, 2008

[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]

BAIL:

Cancellation of bail granted by High Court – Accused having criminal history – Several criminal cases pending against him – Applications seeking protection to complainants' family from accused – HELD: Complainant can always question the order granting bail if the same is not validly passed – It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse – Bail order can be tested on merits also – Therefore, complainant could question the merits of order granting bail – In the instant case, the order indicates that no reasons were given by High Court while granting bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter – While granting bail, particularly in serious cases like murder, some reasons justifying the grant of bail are necessary – Order granting bail is set aside and High Court directed to decide the application again – Accused shall immediately surrender – After his surrender, bail application shall be considered by High Court again – Order granting bail – Reasons to be recorded.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2087 of 2008.

From the Final Judgment & Order dated 5.6.2007 of the High Court of Judicature at Allahabad in Bail Application Nos. 11419 of 2007.

Pramod Kumar Yadav and S.P. Sharma (for Rameshwar Prasad Goyal) for the Appellant.

Shiva Pujan Singh, Prashant Chaudhary and Bharat Ram (for Shrish Kumar Misra) for the Respondents.

The following Order of the Court was delivered:

ORDER

1. Leave granted.

2. The order granting bail to the accused Munna @ Munna Jaiswal passed by the High Court is in challenge here. The respondent – accused Munna is facing a prosecution for the offences under Sections 302, 504 & 506 I.P.C. in Crime Case No. 152 of 2006 of Police Station Chakia. It is alleged that on 15.12.2006 at about 4.45 p.m., a report came to be lodged regarding the incident that took place at 2.00 p.m. on the same day wherein it was alleged by complainant Brij Nandan Jaiswal that his son alongwith Bechan and Balmukund went to cut woods in the forest and while they were coming back from the forest on bicycles, Brij Nandan and Bal Mukund were leading while complainant's son Jai Shankar was following them. When they all reached Jabelia Mode, Jai Shankar shouted very loudly. At that time, the complainant and his companions saw that Jai Shankar was being inflicted blows with lathis, danda and iron rods by Lalji and his son Kallu @ Vinod, Munnu @ Munna and one other unknown person. On seeing the complainant party, all the four ran away towards forest threatening the complainant and his companions. While Jai Shankar was being taken for treatment, he died at about 3.00 p.m. The three accused persons were taken into custody between 03.01.2007 to 05.01.2007. Investigation proceeded during which the lathi was discovered. It was found that the accused had assaulted the complainant's family twice and even those cases were pending and charge sheets were filed in those cases. Apart from that, the accused Munna was also involved in a gambling case. The post-mortem report showed that the deceased had sustained several injuries and that Jai Shankar had died due to hemorrhage and resultant shock.

3. A bail application was filed before the Sessions Judge who rejected the same. It was urged before the Sessions Judge that the seven injuries were found on the hands and feet of the deceased and as such it could not be said that this offence could be brought under Section 302 I.P.C. It was also urged that the alleged 4th person in the complainant's party was

A not located. The Sessions Judge took the view that the accused had criminal history. The Sessions Judge also found that it was broad day light murder and since the witnesses had seen the murder been committed on account of the old enmity, the accused was not entitled to bail.

B 4. The High Court, however, in a very short order came to the conclusion that the accused was entitled to be released on bail. The High Court seems to have noted the arguments on behalf of the accused respondent that there was no motive or intention to commit the alleged offence and that there were three others also who had caused injuries by iron rods, lathi and danda and the deceased received the injury on the non-vital part of the body.

C 5. The High Court, thus released the respondent on bail. Feeling aggrieved, the complainant had filed this Special Leave Petition.

D 6. It is argued by the learned counsel appearing for the complainant that the accused had criminal history and that there were criminal cases pending against him. It is pointed out by the learned counsel that even earlier since there was an apprehension of attack, the son of the petitioner Karnala

E Prasad had already moved an application on 17.03.2006 for providing protection to petitioner's family from the accused persons. However, no action was taken. Learned counsel further contends that on 28.05.2006, the accused had assaulted deceased with intention to commit murder and crime case no.

F MCR 75/06 was registered. It is further pointed out that on 03.06.2006, the wife of the deceased Jai Shankar had also moved an application for protection to her husband and his family as the accused had given threat to kill him. It is further pointed out that on 17.07.2006, the accused no. 1 was bound by Sub Divisional Magistrate under Sections 107 and 116

G Cr.P.C. for not committing breach of peace. It is also pointed out that again on 31.07.2006, the accused inflicted injuries by lathi and knife on the chest of the deceased for which Crime No. MCR No. 108/06 was registered against him in which chargesheet was also filed for offences under Sections 323 and

H 504 I.P.C. The learned counsel points out that while granting

bail, the bitter enmity was not taken into consideration by the High Court and the High Court mechanically proceeded to grant the bail to the accused. On the other hand, it was urged by the defence counsel that while it was true that there was enmity between the two families, it could not be forgotten that they were relatives of each other and due to enmity, the allegations were made and criminal cases were inflicted. It is further urged that even after the bail was granted, there was no incident and therefore the apprehension on the part of the complainant was ill founded. It was also pointed out that the prosecutions faced by the accused were of insignificant crimes and there was no allegation against the accused. Learned counsel also urged that there was no justification for canceling the bail once granted.

7. It is now a settled law that complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also. In our opinion, therefore, the complainant could question the merits of the order granting bail. However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter. While granting bail, particularly in serious cases like murder some reasons justifying the grant are necessary.

8. Therefore, without expressing anything on the merits of the bail application, we would chose to set aside the order granting bail and direct the High Court to decide the application again. The accused shall immediately surrender within one week from today. If he does not surrender, a non-bailable warrant shall be issued against him. After his surrender, the bail application shall be considered by the High Court again.

9. We, therefore, allow this appeal to the limited extent as we have indicated. The bail application shall be disposed of within two weeks of the surrender of the accused or as the case may be of his arrest.

R.P.

Appeal partly allowed.