REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2086 OF 2010
(Arising out of S.L.P. (Crl.) No.4590 of 2010)

PRASANTA KUMAR SARKAR — APPELLANT (S)

VERSUS

ASHIS CHATTERJEE & ANR. — RESPONDENT (S)

J U D G M E N T

D.K. JAIN, J.:

Leave granted.

2. This appeal, by special leave, is directed against order dated 11th January, 2010 passed by the High Court of Calcutta in C.R.M. No. 272 of 2010, granting regular bail to respondent No. 1 in this appeal (hereinafter referred to as "the accused"), under Section 439 of the Code of Criminal Procedure, 1973 (for short "the Code").

3. The accused is facing trial for an offence punishable under Section 302 of the Indian Penal Code, 1860 (for short "IPC") for allegedly

committing the murder of one Ms. Mallika Sen. Respondent No.2 is the State of West Bengal.

4. Very briefly stated the facts material for the adjudication of this appeal can be stated thus:

Ms. Mallika Sen, a 57 years old widow was found strangulated at her residence on 2nd July, 2009. The appellant, who is the brother of the victim, lodged a written complaint at the Rampurhat Police Station, on the basis of which FIR No. 111/09 dated 2nd July, 2009 was registered under Section 302, IPC.

It has been alleged that a neighbour of late Ms. Sen, one Mr. Somenath Dutta, saw the accused rushing out of the residence of the deceased, around the time the incident took place. The accused was arrested on 13th July, 2009 and produced before the Additional Chief Judicial Magistrate who remanded him to judicial custody. Thereafter, on the same day, the police filed a forwarding report in the said court, *inter alia,* requesting for holding of a Test Identification Parade (T.I.P.) of the accused. The T.I.P. was conducted, but perhaps the accused could not be identified. However, in the second T.I.P., the accused was duly identified by the aforesaid witness.

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5. The accused filed several bail applications before the Additional Chief Judicial Magistrate which were all dismissed vide orders dated 7th September, 2009, 16th September, 2009 and 19th September, 2009.

6. On 7th October, 2009, charge-sheet No. 138 of 2009 under Section 302 IPC was filed against the accused before the Additional Chief Judicial Magistrate.

7. Having failed to secure bail from the Sessions Court, the accused preferred a bail application, being C.R.M. No. 272 of 2010 before the High Court under Section 439 of the Code. As stated above, by the impugned order, the High Court allowed the application, and granted bail to the accused by a short order, observing thus:

> "Having regard to the nature of the alleged crime, we do not think that interest of investigation requires or (*sic)* justifies further detention of the present petitioner at this stage."

8. Hence the present appeal by the complainant.

9. Mr. Nagender Rai, learned senior counsel appearing on behalf of the appellant, while assailing the impugned order, contended that the said order being non-speaking, deserves to be set aside in light of the decision of this Court in ***Masroor*** *Vs.* ***State of Uttar Pradesh & Anr.***[1].

[1] (2009) 14 SCC 286

Learned counsel submitted that the High Court has failed to take into consideration the manner in which a hapless old lady was done to death as also the fact that the accused had been duly identified by an independent witness.

10. *Per contra,* Mr. Ujjwal Banerjee, learned counsel appearing for the accused, contended that the case against the accused was false, as is evident from the fact that the witness had failed to identify the accused in the first T.I.P. Learned counsel contended that the accused had been arrested on a mere suspicion, and in light of the fact that he has not misused the bail, the impugned order needs to be affirmed.

11. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (*i*) whether there is any prima facie or

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reasonable ground to believe that the accused had committed the offence; (*ii*) nature and gravity of the accusation; (*iii*) severity of the punishment in the event of conviction; (*iv*) danger of the accused absconding or fleeing, if released on bail; (*v*) character, behaviour, means, position and standing of the accused; (*vi*) likelihood of the offence being repeated; (*vii*) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. (See: ***State of U.P. through CBI*** *Vs.* ***Amarmani Tripathi***[2]***; Prahlad Singh Bhati*** *Vs.* ***NCT, Delhi & Anr.***[3]***; Ram Govind Upadhyay*** *Vs.* ***Sudarshan Singh & Ors.***[4]*)*

12. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In ***Masroor*** (supra), a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows:

> "Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence."

[2] (2005) 8 SCC 21
[3] (2001) 4 SCC 280
[4] (2002) 3 SCC 598

(See also: ***State of Maharashtra*** *Vs.* ***Ritesh***[5]; ***Panchanan Mishra*** *Vs.* ***Digambar Mishra & Ors.***[6]***; Vijay Kumar*** *Vs.* ***Narendra & Ors.***[7]***; Anwari Begum*** *Vs.* ***Sher Mohammad & Anr***[8]***)***

13. We are constrained to observe that in the instant case, while dealing with the application of the accused for grant of bail, the High Court completely lost sight of the basic principles enumerated above. The accused, in the present case, is alleged to have committed a heinous crime of killing an old helpless lady by strangulation. He was seen coming out of the victim's house by a neighbour around the time of the alleged occurrence, giving rise to a reasonable belief that he had committed the murder. We feel that under the given circumstances, it was not the stage at which bail under Section 439 of the Code should have been granted to the accused, more so, when even charges have not yet been framed. It is also pertinent to note that, as stated above, the Additional Chief Judicial Magistrate had rejected three bail applications of the accused but the High Court did not find it worthwhile to even make a reference to these orders. In this regard, it would be useful to refer to the following observations echoed in

[5] (2001) 4 SCC 224
[6] (2005) 3 SCC 143
[7] (2002) 9 SCC 364
[8] (2005) 7 SCC 326

Kalyan Chandra Sarkar *Vs.* ***Rajesh Ranjan @ Pappu Yadav & Anr.***[9]:-

> "In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted." (See also: ***Ram Pratap Yadav*** *Vs.* ***Mitra Sen Yadav & Anr.***[10])

14. For the foregoing reasons, the appeal is allowed, and the impugned order is set aside. The bail bond and the surety furnished by the accused in terms of the impugned order stands cancelled and it is directed that he will be taken into custody forthwith. Needless to add that observations touching the merits of the case against the accused are purely for the purpose of deciding the question of grant of bail and if in future any such application is filed by the accused, it shall be considered on its own merits untrammelled by any of these observations.

.....J.

[9] (2004) 7 SCC 528
[10] (2003) 1 SCC 15

(D.K. JAIN)

…….J.
(H.L. DATTU)

NEW DELHI;
OCTOBER 29, 2010.

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