CASE NO.:
Appeal (crl.) 1248 of 2005

PETITIONER:
State through C.B.I.

RESPONDENT:
Amaramani Tripathi

DATE OF JUDGMENT: 26/09/2005

BENCH:
Ashok Bhan & R.V. Raveendran

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (CRL) NO.3503 OF 2004)
With
Criminal APPEAL NO.1249/2005
(Arising out of S.L.P. (Crl.) No.769 OF 2005)

State of U.P. through C.B.I. ...
Appellant

Vs.

Madhumani Tripathi ...
Respondent

BHAN, J.

Leave granted.

The State of Uttar Pradesh through CBI aggrieved by the orders dated 29th April, 2004 and 8th July, 2004 passed by a Single Judge of Allahabad High Court (Lucknow Bench) in Crl. Misc. Case No.1402(B)/2004 and No.1954(B)/2004 releasing the accused Amarmani Tripathi (Accused No.5) and Madhumani Tripathi (Accused No.4) on bail have filed these appeals.

On 9th May, 2003 Madhumita Shukla was shot dead in her house located in Paper Mill Colony by two persons who were later on identified as Santosh Kumar Rai and Prakash Chandra Pandey. Investigation in the case revealed that Madhumita Shukla was killed pursuant to a conspiracy involving Amarmani Tripathi and his wife Smt. Madhumani Tripathi, Nidhi Shukla lodged a Report in regard to the blind murder of her sister Madhumita Shukla on 9.5.2003 in the Mahanagar Police Station, Lucknow. The case was transferred to Crime Branch, CID on 17.5.2003. On a request made by the State on 17.6.2003, the CBI took over the investigation.

The case of the prosecution in brief is as follows:

Amarmani Tripathi, a Minister in the U.P. Government, at the relevant time, was having an affair with deceased Madhumita Shukla, a young Poetess. This led to Madhumita's pregnancy thrice. On the first two occasions, the pregnancy was

aborted at the instance of Amarmani. On the third occasion, inspite of pressure and persuasion by Amarmani, Madhumita refused to abort the pregnancy. The post-mortem revealed a six month old foetus in her womb. D.N.A. test of the foetus established the paternity of Amarmani.

Madhumani Tripathi, wife of Amarmani, was upset when she learnt about the illicit intimacy between Amarmani and the deceased. She made several calls to the deceased and her family members to threaten and abuse them. During the end of March, 2003 Madhumani Tripathi informed one Rohit Chaturvedi (cousin of Amarmani) that she was troubled by her husband's relationship with Madhumita and requested him to help her to teach a 'lesson' to Madhumita. Rohit Chaturvedi, therefore, introduced one Santosh Rai as a person who can help her. Madhumani told Santosh Rai that Madhumita should be finished, whatever be the expense.

On 14.4.2003 when Rohit Chaturvedi came to Lucknow, Madhumani asked him to instruct Santosh Rai to do the work assigned to him without delay. On the same evening Rohit Chaturvedi informed Amarmani that Bhabhi Madhumani wanted Madhumita to be eliminated. Amarmani told Rohit that it may be done taking care to see that his name was not linked to the incident. He also stated that being a Minister in the U.P. Govt., shall protect them. Amarmani was no longer interested in Madhumita as she was becoming a nuisance and he had found other interests. Amarmani felt that if Madhumita gave birth to the love-child, it could adversely affect his image as a politician and Minister and also cause problem in his family.

Madhumani kept on pressing Rohit to get the work done. On 1.5.2003 Madhumani told him that all limits have been crossed and action should be taken immediately. Madhumani rang up Rohit several times to tell Santosh Rai to do her work and Rohit passed on the message to Satonsh Rai. Santosh Rai met Madhumani in this connection on 5.5.2003. Santosh Rai assured Rohit that the work will be done within 2 to 4 days. In pursuance of it, on 9.5.2003 Santosh Rai along with Prakash Pandey went to the house of Madhumita and shot her with a country made pistol (katta) from close range, resulting in her death.

According to the prosecution, the murder of Madhumita was a result of the conspiracy among Madhumani, Amarmani, Rohit Chaturvedi, Santosh Rai and Prakash Pandey. Amarmani was arrested on 23.9.2003. On 19.12.2003 a charge-sheet was filed against six accused, namely, (1) Santosh Kumar Rai @ Satya Prakash, (2) Prakash Chander Pandey @ Pappu, (3) Rohit Chaturvedi, (4) Madhumani Tripathi, (5) Amarmani Tripathi and (6) Yagya Narain Dixit. On the date of filing of the chargesheet, accused no.4, Madhumani Tripathi, was absconding. However, when the first bail application filed by Amarmani Tripathi was rejected by the High Court by order dated 11.3.2004 on the

ground that the co-accused (Madhumani Tripathi) had not surrendered, Madhumani surrendered on 25.3.2004.

Amarmani made a second bail application under Section 439 Cr.P.C. in Crl. Misc. Case No.1402(B)/2004. The High Court by order dated 29.4.2004 granted bail to Amarmani on the following reasoning:

a) The entire theory of Amarmani being part of the conspiracy to murder Madhumita was based on the confessional statement of the co-accused Rohit Chaturvedi (recorded on 17.11.2003 by Vikas Dhul, Metropolitan Magistrate, at New Delhi). Rohit had made his confession conditional of being treated as an approver. Rohit had subsequently retracted from the confession. The admissibility of the confession against a co-accused is doubtful.

b) Normally, Courts should first examine the material, other than the confessional statement of a co-accused, to find out if there is any evidence of conspiracy/abetment. The confessional statement of a co-accused should be considered only as a supporting piece of evidence, and not as the substantive evidence against an accused. The confessional statement of a co-accused, more so, one that has been retracted, cannot be made the foundation for establishing the guilt of an accused. In this case, if the said confessional statement of Rohit is excluded, there is no evidence, direct or otherwise to show that Amarmani was in any manner, party to the conspiracy to kill Madhumita.

c) The other material relied on by the prosecution against Amarmani are: (i) illicit relationship between Amarmani and the deceased; (ii) DNA test report showing that Amarmani was the father of the foetus in the womb of the deceased; (iii) pressure applied by Amarmani on the deceased to abort the pregnancy; (iv) undated letter of the deceased addressed to Amarmani finding fault with him for ignoring her. These were yet to be tested in trial. More importantly it cannot be said that the only inference that can be drawn from the said material is that Amarmani was a party to the conspiracy to murder the deceased. These material can only lead to an inference that the conduct of Amarmani was immoral and that there was an effort on his part to cover up such conduct and nothing more.

d) The criminal history of the accused Amarmani (20 criminal cases ending in acquittal and 4 cases pending including a case of kidnapping) cannot be a ground to refuse bail.

e) The contention of the CBI that the investigation was still in progress in pursuance of the permission for further

investigation granted by the High Court by order dated 8.4.2004 under Section 173(8) of the Cr.P.C. was not tenable as such further investigation was only in regard to Madhumani and not in regard to Amarmani. Charge-sheet had already been submitted. Madhumani was in jail and shall remain available for interrogation, if any, by CBI.

f) Amarmani was in jail since September, 2003 The investigation was already concluded. There was no chance of Amarmani either fleeing, or tampering with the witnesses. There was nothing to connect the disappearance of the domestic servants of Amarmani, with him, whom CBI wanted to interrogate. If it was found at any stage that he was not co-operating in the trial of the case or found to be tutoring/maneuvering any witness, CBI can move an application for cancellation of bail at that stage.

Amarmani's wife Madhumani applied to the Sessions Judge, Lucknow for bail in Crl. Misc. Case N.960/2004. It was rejected by order dated 20.4.2004. Thereafter she approached the High Court for bail in Crl. Misc. Case No.1954(B) of 2004. The High Court granted bail to Madhumani by order dated 8.7.2004 on the following reasoning:

a) Madhumani is not the main accused, but only an alleged conspirator/abettor. Her husband, whom the Prosecution considers to be the main conspirator had already been granted bail and grounds on which he was granted bail are also available for granting bail to her.

b) Madhumani is only a housewife without any criminal antecedents. She has not been named in the FIR or in the statements of Nidhi Shukla and Desraj (servant of the deceased) recorded under Section 161 Cr.P.C. Her name came to be linked with the murder for the first time in the confessional statement of Rohit made on 17.11.2003. The admissibility of such confessional statement, particularly, against a co-accused is doubtful and that question has to be considered at the time of trial.

c) There is no allegation that Madhumani made any attempt to tamper with the evidence. She was available for interrogation on 4.8.2003 and 6.9.2003. When she moved an application on 24.9.2003 for surrender, the special Judicial Magistrate, CBI by order dated 6.10.2003, rejected the application for surrender on the ground that she was not wanted till that date. All circumstances show that Madhumani was available from the date of incident till 6.10.2003. Though she was said to be absconding after her name cropped up in the conspiracy, she subsequently surrendered before Court when the first application of Amarmani for bail was rejected on the ground that she was absconding. There is no chance of her fleeing.

d) The entire material against her regarding intimacy between her husband and the deceased

and subsequent developments is purely based on circumstances and the evidence indicated only a possible motive. The mobile phone calls attributed to her and printouts relating thereto are not sufficient to infer any conspiracy, as the Mobile phones used were not in her name, but in the name of her husband. The Parchi allegedly handed over by her to the hired killers (containing the name, address and telephone numbers of the deceased) is yet to be proved as being in her handwriting.
e) The prosecution case is based on two contradictory theories of conspiracy, one hatched by her husband, the other hatched by her, by joining hands with her husband.
f) The sessions court committed an error in rejecting her bail application being influenced by the fact that it is a media highlighted case and by the fact that her husband is an influential person.

Being aggrieved by the two orders of the Allahabad High Court granting bail to Amarmani and Madhumani, the State has approached this Court. Shri Gopal Subramanium, learned Additional Solicitor General appearing for the petitioner, submitted that the material on record, before the High Court clearly disclosed the following position:
i) That the murder of pregnant Madhumita, a heinous crime, was committed in pursuance of a conspiracy hatched by accused 1 to 5. The murder was committed by the killers (accused 1 & 2), hired by accused no.4 with the concurrence, support and protection of accused no.5, through accused no.3. There was material to show (i) the illicit relationship of Amarmani with the deceased resulting in three pregnancies; (ii) Amarmani's intention to get out of the relationship; (iii) Amarmani's attempt to put an end to the last pregnancy also, by requiring his servant Pappu Chaudhary to pose as the father of the foetus and give consent for abortion; (iv) Madhumani's ire and jealously against the deceased and expression of an intention to get rid of her; (v) Madhumani's subsequent action in engaging killers (accused 1 and 2) through accused No.3 to kill Madhumita; and (vi) the consent of Amarmani for Killing Madhumita, as instructed by his wife without involving his name and assuring protection to the persons committing the murder.
ii) That Amarmani was interfering with the investigation, by trying to side-track it and mislead the Police into a false trail, planting false stories in the media, creating false evidence and threatening witnesses either directly or by using the police. He even managed to get the Police Officers (including an officer of the Rank of SSP) who were not toeing his line, transferred.
iii) That after release on bail in pursuance to

the order of the High Court, Amarmani was attempting to threaten/coerce/buy over witnesses (Nidhi Shukla, sister, Shanti Kumari Shukla and Najib Khan).

iv) That Madhumani had already absconded earlier. Only the rejection of bail application of her husband on that ground made her to surrender. There is every likelihood of her again fleeing, if she continuous to be on bail. Further, if Amarmani alone is denied bail, the threatening of witnesses will be taken over by Madhumani.

On the other hand Shri Rakesh Dwivedi, learned Senior Counsel appearing for Amarmani submitted that this is a case of blind murder. There is no material showing any involvement of Amarmani in the murder or in any conspiracy. There was never any contact between Amarmani and the hired killers. He submitted that the retracted confessional statement of Rohit Chaturvedi which alone linked Amarmani's name to the conspiracy is to be ignored, in view of the law laid down by this Court; and if it is so ignored, there is absolutely no material at all to show that Amarmani was involved in the conspiracy. The, material, including the statements of Nidhi, Shanti Kumari, Pappu Chaudhary relied upon by the prosecution and the post-mortem report showing the six month foetus and the DNA report showing Amarmani as the father, even if accepted could at best establish an illicit relationship between Amarmani and Madhumita and an attempt to abort the pregnancy and nothing more. He submitted that the conduct of Amarmani, even if it was morally incorrect, can in no way be considered as proof of an intention to kill Madhumita or proof of his being a party to any conspiracy to kill Madhumita. He also stated that any action taken by Amarmani to safeguard himself and his wife, cannot be branded as conspiracy.

Shri KTS Tulsi, learned Senior Counsel appearing for Madhumani similarly contended that if the confessional statement of Rohit is excluded, there is nothing to link Madhumani to the death of Madhumita. He pointed out that the entire material, even assuming to be true, only showed an illicit relationship between Amarmani and the deceased and expression of anger by Madhumani against such illicit relationship and nothing more. He submits that the expression of righteous indignation by a wife and verbal abuse of the girl trying to wreck her marital life, is not evidence of participation in any conspiracy to kill the deceased.

Shri Dwivedi and Shri Tulsi, learned Senior Counsel relied on several decisions regarding the effect of confessional statements. They contended that no interference was called for in regard to the orders of the High Court granting bail to Amarmani and Madhumani. They submitted that the

basic rule is bail and not jail, unless there are circumstances suggesting fleeing from justice or thwarting justice either by repeating the offence or intimidating witnesses (vide State of Rajasthan vs. Balchand - 1977 (4) SCC 308 and Gudikanti Narasimhulu vs. Public Prosecutor \026 1978 (1) SCC 240).

They relied on the decision in Bihar Legal Support Society vs. Chief Justice of India [1986 (4) SCC 767] wherein a Constitution Bench of this Court observed as follows:

"The apex court must interfere only in the limited class of cases where there is a substantial question of law involved which needs to be finally laid at rest by the apex court for the entire country or where there is grave, blatant and atrocious miscarriage of justice. Sometimes, we judges feel that when a case comes before us and we find that injustice has been done, how can we shut our eyes to it. But the answer to this anguished query is that the judges of the apex court may not shut their eyes to injustice but they must equally not keep their eyes too wide open, otherwise the apex court would not be able to perform the high and noble role which it was intended to perform according to the faith of the Constitution makers. It is for this reason that the apex court has evolved, as a matter of self-discipline, certain norms to guide it in the exercise of its discretion in cases where special leave petitions are filed against orders granting or refusing bail or anticipatory bail..... We reiterate this policy principle laid down by the bench of this Court and hold that this Court should not ordinarily, save in exceptional cases, interfere with orders granting or refusing bail or anticipatory bail, because these are matters in which the High Court should normally be the final arbiter."

(Emphasis supplied)

Reliance is next placed on Dolat Ram and others vs. State of Haryana 1995 (1) SCC 349, wherein the distinction between the factors relevant for rejecting bail in a non-bailable case and cancellation of bail already granted, was brought out :

"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the

cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

They also relied on the decision in S.N. Bhattacharjee vs. State of West Bengal 2004 (11) SCC 165 where the above principle is reiterated. The decisions in Dolat Ram and Bhattacharjee cases (supra) relate to applications for cancellation of bail and not appeals against orders granting bail. In an application for cancellation, conduct subsequent to release on bail and the supervening circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant under Section 439 read with Section 437, continue to be relevant. We, however, agree that while considering and deciding appeals against grant of bail, where the accused has been at large for a considerable time, the post bail conduct and supervening circumstances will also have to be taken note of. But they are not the only factors to be considered as in the case of applications for cancellation of bail.

It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of 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 tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see Prahlad Singh Bhati vs. NCT, Delhi 2001 (4) SCC 280 and Gurcharan Singh vs. State (Delhi Administration) AIR 1978 SC 179). While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he

will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar vs. Rajesh Ranjan, 2004 (7) SCC 528:

"The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

a. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

b. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

c. Prima facie satisfaction of the court in support of the charge. (see Ram Govind Upadhyay vs. Sudarshan Singh, 2002 (3) SCC 598 and Puran vs. Ram Bilas 2001 (6) SCC 338."

This Court also in specific terms held that:

"the condition laid down under section 437(1)(i) is sine qua non for granting bail even under section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life

imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

In Panchanan Mishra vs. Digambar Mishra, 2005 (3) SCC 143, this Court observed :

"The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime..... It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation."

Therefore, the general rule that this Court will not ordinarily interfere in matters relating to bail, is subject to exceptions where there are special circumstances and when the basic requirements for grant of bail are completely ignored by the High Court. (see Pawan vs. Ram Prakash Pandey \026 2002 (9) SCC 166; Ram Pratap Yadav vs. Mitra Sen Yadav \026 2003 (1) SCC 15 and Kalyan Chandra Sarkar vs. Rajesh Ranjan \026 2004 (7) SCC 528.

While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no pre-judging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary. An examination of the material in this case, set out above, keeping in view the aforesaid principles, disclose prima facie, the existence of a conspiracy to which Amarmani and Madhumani were parties. The contentions of Respondents that the

confessional statement of Rohit Chaturvedi is inadmissible in evidence and that should be excluded from consideration, for purpose of bail is untenable. This Court had negatived a somewhat similar contention, in Kalyan Chandra Sarkar (supra) thus :

"The next argument of learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a prima facie case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial."

But what is more relevant, in this case is the conduct of Amarmani from day of the murder in trying to interfere, detract and mislead the investigation and to threaten and coerce witnesses. We may refer to the following circumstances disclosed by statements recorded under Section 161 Cr.P.C. :

i) Nidhi Shukla and Shanti Kumari Shukla (sister and mother of the deceased respectively) have stated that on 10.5.2003 Amarmani met them near the mortuary and informed them that he will handle the entire situation and instructed them with threats, to be careful while making any statement and not to link him or his wife in regard to the murder. This was repeated during the second week of May 2003, by summoning the mother of the deceased to his house.

ii) The statement of Mr. Anil Aggarwal, SSP, Lucknow shows that on the intervening night of 9th and 10th May, 2003 (at about 1.00 a.m), Amarmani called him on his mobile phone and made enquiries about the murder and informed him that he or his

wife had nothing to do with the murder and that his wife was a very simple house wife and that he (Anil Aggarwal) should help him.

iii) When Anil Aggarwal learnt that there was six month old foetus in the womb of the deceased and that without removing the foetus, the body had been handed over to the relatives of the deceased, he immediately instructed that the body should be brought back and the Doctor should remove the foetus and preserve it for purposes of investigation. In pursuance of it, action was taken to stop the vehicle in which the body was being taken to the native place. Amarmani again called the SSP (Anil Aggarwal) on the mobile phone and told him that he knew Madhumita and that she was a simple girl. That there was some mistake in the report that Madhumita was pregnant and the body of Madhumita had already started decomposing and the family should be permitted to proceed to their village immediately with the body so that funeral can be performed before sun set.

iv) That on 15.5.2003 Amarmani again contacted Anil Aggarwal, SSP on his mobile phone and informed him that from his own sources and investigation he had found out that Madhumita was married to one Anuj Mishra, a student of IIT Kanpur, and that he had located the Priest who had performed the marriage in November-December, 2002. He also stated that if the marriage could be proved the aspersion cast on his character can be removed by showing that the deceased was pregnant on account of her marriage with Anuj Mishra. He instructed the SSP to send Yagya Narain Dixit, SO, Manek Nagar to him, so that he would tell him what is to be done to prove such marriage.

v) On the same day around 10 p.m. Amarmani again called Anil Aggarwal, SSP urging him to depute Yagya Narain Dixit, SO Manek Nagar (who was apparently close to him and was arrayed as the 6th accused being charged under Section 201 of the IPC. He later on died in an accident) to verify the marriage with Anuj Mishra. Amarmani again called Anil Aggarwal on the morning of 16.5.2003 at around 10 a.m. on the mobile and reiterated the demand. Again on the evening of 16.5.05 he called the SSP on his mobile to enquire about the progress and sounded very anxious and stated that the matter was getting delayed. When the SSP asked Amarmani to send the person who has given the information about the marriage of Madhumita with Anuj Mishra to his office so that he could send some police officer to Kanpur to verify the matter and also informed Amarmani that he (SSP) will

decide who should be deputed to verify the matter, the very next day (17.5.2003) the SSP was transferred, at the instance of Amarmani.

The statement of the SSP shows that Amarmani tried to side track the matter by implicating Anuj Mishra and to ensure that the foetus is not removed or preserved or examined. When SSP refused to comply, he was transferred. Kamaal Khan, NDTV correspondent/Bureau Chief, Lucknow and Deepak Gidwani, Bureau Chief, Sahara Samay T.V. have clearly stated that Amarmani informed them that he had complained to the Chief Minister that investigation was not being done properly and got Anil Aggarwal, SSP transferred; and that he also informed them that his private investigation showed that deceased had married Anuj Mishra.

vi) Amarmani thereafter managed to ensure that his confidant Yagya Narain Dixit was deputed to threaten Rishi Khare, room mate of Anuj Mishra, to admit that there was a marriage between Anuj Mishra and Madhumita. The statement of Rishi Khare, the room mate of Anuj Misra at IIT Hostel, Kanpur showed that at the instance of Amarmani, Yagya Narain Dixit, SO of Manek Nagar suggested, threatened and coerced him to admit that he was a witness to the marriage of Madhumita with Anuj Mishra in spite of his repeatedly stating that he was not aware of any such marriage; and he even held out promises to Rishi Khare on behalf of Amarmani after repeatedly speaking to Amarmani Tripathi over the phone in his presence.

vii) The statement of Rishi Khare shows that he and his father and his landlord were taken by Yagya Narain Dixit to meet Amarmani, who demanded that he should speak about the wedding of Anuj Mishra and deceased. In his presence Amarmani also informed Yagya Narain Dixit that if Rishi Khare refused to admit of being a witness to such marriage he should use tougher methods to make him admit the wedding between Anuj Mishra and Madhumita. He also threatened Rishi Khare that he can be framed by showing that a country made revolver was recovered from him, thereby landing him in jail.

viii) Kamaal Khan, NDTV correspondent/Bureau Chief, Lucknow and Deepak Gidwani, Bureau Chief, Sahara Samay T.V. were invited by him and told them that he had a major scoope which would turn the entire story of the Madhumita's case upside down. That Madhumita's case was not being investigated properly and he was doing his own investigation. That he has been able to identify the real killers of Madhumita. Madhumita was married to

Anuj Mishra and the marriage was performed by a priest who was present in the house and was introduced to them.

The evidence collected above discloses that there were repeated attempts by the accused Amarmani to interfere, and side track the investigation and threaten the witnesses to come out with a story that will deflect the suspicion from him and his wife to Anuj Mishra or others. It is also not in dispute that Amarmani was on bail in a kidnapping case, when he indulged in these activities in May, 2003. These materials were placed by the prosecution before the High Court to establish a reasonable apprehension of tampering. The learned Single Judge has, however, completely ignored these materials relating to tampering with evidence/witnesses. This necessitates interference with the order of the High Court.

Shri Subramanium, learned ASG next referred to the threats to witnesses held out by Amarmani after his release on bail. Reliance is placed on the four complaints received by the crucial prosecution witnesses. Nidhi Shukla, sister of the deceased by letter dated 10.9.2004, and Shanti Kumari, mother of the deceased by an undated letter, have made separate complaints to the CBI in regard to efforts made by Amarmani to induce them to accept money through one NK Mishra to settle the matter and that when they refused, he threatened them. Another witness Najib Khan (a family friend of the deceased) has also sent a complaint dated 22.9.2004, stating that on that day two persons knocked on his door, hurled abuses at him and told him that the CBI officers were far away and once the cases were closed, no one will protect him and he will be killed. Lastly, one Birjesh Pathak, Member of Parliament has also sent a complaint dated 16.9.2004 to the CBI alleging that an attempt on his life was made on 7.9.2004 which, according to him, was at the instance of Amarmani. The said allegations are denied in the counter-affidavit filed on behalf of Amarmani by his brother/Pairokar. It is contended that these complaints must have been sent at the instance of the CBI itself. In so far as Brijesh Pathak is concerned, it is also alleged that he is a close confidant of Amarmani's political rival. However, in the view we have taken, it is unnecessary to examine this aspect.

The High Court has failed to deal with the vast material placed by the CBI which clearly indicated that the accused has, at all material times, tried to interfere with the course of investigation, tamper with witnesses, fabricate evidence, intimidate or create obstacles in the path of investigation officers and derail the case.

The statement of Anil Aggarwal, SSP Lucknow is revealing and in our opinion the High Court on this statement alone should have rejected the bail and, in any event, it is sufficient to allow the

present appeal. A senior police officer has stated that the accused asked for his help against his implication in the case. The accused asked the officer not to preserve the foetus and that the body should be taken to her native place for the last rites. The officer also speaks about his being rebuked by senior bureaucrats for recovering the foetus. It is relevant to note that the officer was sought to be misled by the accused by giving false information about a marriage between Anuj Mishra and the deceased. But for his diligence, the foetus would not have been preserved. For doing his duty diligently, the officer was punished with a transfer out of normal course. The very fact that a senior police officer could be transferred out of Lucknow on 17th of May, 2003, clearly shows the amount of influence wielded by the accused. Ajay Kumar Chaturvedi, the first investigating officer who had also refused to tow the line of the accused was also transferred on the same date. Likewise, Mr. Beni Singh Verma, Inspector of Police, CB-CID and Mr. Dinanath Mishra , Inspector of Police, CB-CID were also transferred. S/Sh. N.V. Sirohi, Mr. Vishwa Bhushan Singh, Mr. Sahab Rashid Khan were also transferred but their transfer orders were quashed by the High Court later on.

In Panchanan Mishra case (supra), it has been held that the Court must apply its mind and go into the merits and evidence on record and determine whether prima facie case was established against the accused. It was held that the seriousness and gravity of the crime was also a relevant consideration. That a balance has to be drawn by the Court to protect fair trial and to secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in a heinous crime and if there is delay in such a case the underlying object of cancellation of bail practically looses all its purpose and significance to the great prejudice and the interest of the prosecution. The Court summed up the principle that the ground to deny bail will be when by testing the balance of probabilities it appears that the accused has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice. It was noticed by the Court that once a person is released on bail in serious criminal cases where the punishment is stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tempering with the prosecution witnesses, threatening the family members of the victim and also create problems of law and order.

In Prahlad Singh Bhati Vs. NCT, Delhi, 2001 (4) SCC 280, this Court reiterated that if a person was suspected of the crime of an offence punishable with death or imprisonment for life then there must exist grounds which specifically negate the existence of reasonable ground for believing that such an accused is guilty of an

offence punishable with the sentence of death or imprisonment for life. The jurisdiction to grant bail must be exercised on the basis of well settled principles having regard to the circumstances of each case. While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused and reasonable apprehension of witnesses being tempered with,

In Kalyan Chandra Sarkar case (supra), this Court reiterated that while granting bail discretion must be exercised in a judicious manner and not as a matter of course. It may not be necessary to do detailed examination of evidence and documentation of the merit of the case but there is a need to indicate reasons for prima facie conclusion why bail was being granted particularly where the accused is charged of having committed serious offence.

In the present case, we find that the High Court has granted bail being of the opinion that the extra judicial confession given by Rohit Chaturvedi one of the co-accused may not stand the test of scrutiny by a judicial mind but that by itself was not sufficient to grant the bail. There is voluminous evidence collected by the CBI to show the involvement of Amarmani Tripathi, and his effort to interfere with the investigation of the case before the grant of bail and also after the grant of bail. He tried to change the course of investigation by creating false evidence of the marriage of Madhumita with Anuj Mishra with the help of Yagya Narain Dixit, a police officer, the 6th accused who died in an accident during the course of investigation. There are written complaints with the investigating agency showing that after his release on bail Amarmani Tripathi tried to threaten as well as win over Nidhi Shukla, sister of the deceased, and her mother by offering bribe. In our opinion, the High Court gravely erred in granting bail to Amarmani Tripathi in such circumstances. The High Court practically failed to consider/take into consideration the voluminous evidence which had been collected by the investigation agency and have been referred to by them in their statement of objections to the application for grant of bail.

It is true that the position of Madhumani is somewhat different from the case of her husband. While her husband is a politician and ex-Minister, she is no doubt a house wife. While her husband has several criminal cases against him, she has no such record. While there is material to show attempts by her husband to tamper with the evidence and threaten witnesses, there is nothing to show that she made any attempt to tamper with the evidence. But there is material to show that she had absconded for several months and

surrendered only when bail was refused to her husband on the ground that she was absconding. Further when the matter is considered in entirety, with reference to the murder of Madhumita and the propensity of the husband and wife to pressurize and persuade others to act according to their wishes there is reasonable ground for apprehension that if her husband alone is taken into custody, leaving her to remain outside, she may take over the task of tampering the evidence and manipulating/threatening witnesses. Therefore, interference is called for even in regard to the bail granted to Madhumani.

We are conscious of the fact that evidence in this case has yet not been led in the Court. Wherever we have referred to the word "evidence" in this order the same may be read as material collected by the prosecution. Reference to the material collected and the findings recorded herein are for the purposes of these appeals only. This may not be taken as an expression of opinion. The Court would be at liberty to decide the matter in the light of evidence which shall come on record after it is led de hors any finding recorded in this order.

For the reasons stated above, the orders dated 29th April, 2004 and 8th July, 2004 passed by the High Court are set aside. The bail bonds of the respondents in each of these cases are cancelled. Respondents are directed to surrender forthwith and in case they fail to do so, the State should take effective steps to take the respondents in custody.
The appeals stand disposed of.