



RAJASTHAN HIGH COURT

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Bail Cancellation Application No. 50/2024

State Of Rajasthan, Through PP

-----Petitioner

Versus

Indira Kumari @ Tanu W/o Shri Pawan Meena, R/o Village Bheerlwadi, P.S.Peepliya, District Jhalawar (Raj.), At present Tenant in House No.N-410, Affordable Housing Scheme, P.S. Udh yog Nagar, Kota (Raj.)

-----Respondent

Connected With

S.B. Criminal Misc. Bail Application No. 2025/2024

Anuj Pokharna @ Mikki Jain S/o Late Roshan Lal, Aged about 45 years, R/o House No.1-D-24, Rajasthan Housing Board colony, Talvandi, Police Station Jawahar Nagar, Kota city. (At Present in Central Jail, Kota)

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

S.B. Criminal Misc. Bail Application No. 2642/2024

Rishabh Raj Gujariya @ Rishabh @ Raunak S/o Phoolchand, Aged About 28 Years, R/o Village Niyamatkhedi, Police Station Ramganjmandi, District Kota (Raj.) At Present House No. 1338-D, Vinoba Bhave Nagar, P.s. Anantpura, District Kota (Raj.) (At Present Accused Confined In Central Jail, Kota).

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

For Petitioner(s)	:	Mr. Samarth Sharma Mr. Om Prakash Pareek Mr. Pankaj Gupta	} for the accused
For Respondent(s)	:	Mr. Imran Khan, PP for the State.	

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND



Reserved on : 03/05/2024
Pronounced on : 10/05/2024

Reportable

"A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final."¹

"The stream of administration of justice has to remain unpolluted so that purity of Court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of Court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned."²

Whether any party to the litigation, approaching this Court, with unclean hands by suppressing and concealing material facts is entitled for any relief or not? Whether the principles of parity in seeking bail can be applied as a straight jacket formula for granting bail under such circumstances? These issues are required to be decided by this Court in this bunch of applications.

1. Pursuant to FIR No.234/2023 reported with Police Station Jawahar Nagar, Kota City, District Kota, after investigation, the police submitted charge sheet against four accused persons namely Indira Kumari (herein after referred to as Indira Kumari), Anuj Pokharna, Pawan Meena and Rishabh Raj for the offences

1 Dalip Singh Vs. State of UP (2010) 2 SCC 14
2 Chandra Shashi Vs. Anil Kumar Verma (1995) 1 SCC 421



under Section 302 & 34 IPC with the allegation that these four persons are culprit of causing murder of the deceased Ganesh on 07.09.2023. The accused Indira Kumari was granted bail by this Court on 07.03.2024, and on the basis of said order, the co-accused/petitioners Anuj Pokharna & Rishabh Raj are seeking the same bail order only on the basis of parity that evidence against all the four accused is same, hence the indulgence of bail be granted to them also.

2. Counsel for the petitioners Anuj Pokharna and Rishabh Raj submits that their case is at par with the case of co-accused Indira Kumari to whom indulgence of bail has been granted by this Court vide order dated 07.03.2024. Counsel submits that as per the statements of the eye witness namely Sumit Sharma and Mohammed Kaif recorded under Section 164 Cr.P.C, the presence of each and every accused including the co-accused Indira Kumari has been established at the spot, where the incident has occurred. Counsel submits that under these circumstances the cases of the present petitioners are at par with the case of Indira Kumari. Hence the petitioners are also entitled to get the same indulgence of bail on the ground of parity.

3. Per contra, learned Public Prosecutor opposed the bail application and submitted that at the time of argument in the bail application of the co-accused Indira Kumari, the correct facts were not brought into the notice of this Court, and the statements of the eye witnesses Sumit Sharma and Mohammed Kaif recorded under Section 164 Cr.P.C were not submitted with the record of the bail application of Indira Kumari. Learned Public Prosecutor



submits that an argument was raised on behalf of the co-accused Indira Kumari that she was not present on the spot. Hence, keeping in view this material aspect of the matter, indulgence of bail has been granted to her. Counsel submits that this Court vide order dated 20.03.2024 issued show cause notice to the co-accused Indira Kumari for cancellation of her bail, for such an act of misrepresentation and suppression of material facts and evidence against her. Counsel submits that under these circumstances the order of grant of bail to the co-accused Indira is liable to be cancelled and the order dated 07.03.2024, passed by this Court granting bail to her be re-called.

4. The counsel for the co-accused Indira Kumari submits that when the statements of these two eye witnesses namely Sumit Sharma and Mohammed Kaif were recorded under Section 161 Cr.P.C they have not alleged anything against the co-accused Indira Kumari and her presence was not shown in their statements and in FIR. Counsel submits that considering these aspects of the matter indulgence of bail was granted to the co-accused Indira Kumari. Hence, there was no suppression of fact on her behalf. Counsel submits that the statement of the material witnesses, recorded under Section 164 Cr.P.C were not received at the time of filing of the bail application by the accused Indira Kumari. Counsel submits that under these circumstances the notice for cancellation of the bail of co-accused Indira Kumari be discharged.

5. Heard and considered the submissions of the counsel appearing for the respective parties and perused the material available on the record.



6. In an incident which occurred on 07.09.2023, one person Ganesh Sharma @ Sunil was murdered for which his brother Anil Sharma lodged a report with Police Station Jawahar Nagar (Kota City) on 08.09.2023 and it was alleged therein that his brother Ganesh Sharma was last seen alive in the company of Anuj Pokharna, Pawan Meena & Rishabh on 05.09.2023 and on 07.09.2023, his dead body was found at the house of Anuj Pokharna and on the basis of suspicion, FIR No.234/2023 was registered by them.

7. Upon this report crime No.234/2023 was registered for the offence under Section 302, 34 IPC and during the course of investigation, statements of several witnesses were recorded under Sections 161 and 164 Cr.P.C including the statement of Anil Sharma and Mohammad Kaif. The accused Indira Kumari was arrested along with co-accused Anuj Pokharna, Pawan Meena and Rishabh and after completion of investigation all of them were chargesheeted under Section 302, 34 IPC.

8. The accused Indira Kumari approached this Court by way of filing regular bail application under Section 439 Cr.P.C being SB Criminal Miscellaneous Bail Application No.16250/2023 and the case was portrayed before this Court as if there was no evidence against her and as per the statements of witnesses Anil Sharma & Mohammad Kaif, recorded under Section 161 Cr.P.C the deceased was last seen in the company of the co-accused Anuj Pokharna, Pawan Meena and Rishabh. In support of such contentions, statements of the witnesses recorded under Section 161 Cr.P.C were shown, which were annexed with the chargesheet and



relying upon this contention, this Court recorded a specific finding that "the allegations levelled by the witness Anil Sharma against the co-accused Anuj Pokharna, Pawan Meena and Rishabh that the deceased was last seen in their company and the petitioner was not named in the FIR and statements of this witness", hence, indulgence of bail was granted to her by this Court vide order dated 07.03.2024.

9. Now claiming parity with the case of Indira Kumari, the co-accused Anuj Pokharna and Rishabh have approached this Court by way of filing their bail applications and are seeking the same indulgence of bail granted to Indira Kumari.

10. Learned counsel for the Anuj Pokharna and Rishabh Raj submits that as per the statements of the material witnesses i.e., Anil Sharma as well as Mohammad Kaif, recorded under Section 164 Cr.P.C, the allegations are same against all the accused persons and the presence of all the four accused persons is shown in the company of the deceased on the place of occurrence on the fateful day i.e., 07.09.2023, when the deceased was murdered. Except the argument of parity no other arguments have been raised by them.

11. This Court was shocked to know that the statements of the material last seen witness Anil Sharma and Mohammad Kaif were recorded by the Judicial Magistrate under Section 164 Cr.P.C during the course of investigation and their statements were part of the chargesheet but these statements recorded under Section 164 Cr.P.C of these last seen witnesses were neither enclosed with



the chargesheet annexed with the bail application nor supplied to the Public Prosecutor.

12. Relying upon the concealed and suppressed incomplete chargesheet, indulgence of bail was granted to the accused Indira Kumari by this Court by treating her case as if there was no evidence of last seen against her with the deceased, whereas she was very much last seen in the company of the deceased along with other three accused persons when the incident of murder occurred.

13. At this stage, this Court vide order dated 20.03.2024 issued suo-motu notices to the accused Indira Kumari for cancellation of her bail. After service of notice, she has submitted in her reply to the notice that she was under the bonafide belief that she has sent complete documents for filing of her bail application. Such explanation of the accused Indira Kumari is not satisfactory and the same cannot be relied upon because the chargesheet, enclosed by the co-accused Anuj and Rishabh before this Court, along with their bail applications, contained the statements of the last seen witnesses Anil Sharma and Mohammad Kaif, recorded under Section 164 Cr.P.C, then certainly, the accused Indira Kumari was also supposed to submit their statements along with the chargesheet submitted by her with her bail application.

14. Upon considering these circumstances it is clear that the accused Indira Kumari concealed and suppressed the material facts and evidence against her and has not approached this Court with clean hands. She has committed an act of misrepresentation of facts before this Court for getting the order of bail as if there



was no evidence against her. On the contrary, the evidence of last seen was there against her along with other co-accused persons.

15. By committing such deliberate act, the accused Indira Kumari has attempted to pollute the stream of justice and has approached this Court with unclean hands by way of concealing and suppressing the material evidence available on record against her for getting indulgence of bail from this Court.

16. The Hon'ble Apex Court in the case of **Chandra Shashi vs. Anil Kumar Verma** reported in **(1995) 1 SCC 421** has held that the stream of administration of justice has to remain unpolluted so that purity of Court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of Court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned. This Court also would like to refer paragraph 2 of the said judgment wherein it is observed that anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice. In paragraph 14 also it is observed by the Apex Court that the legal position thus is that if the publication be with intent to deceive the Court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice.



17. The Hon'ble Apex Court in the case of **K.D.Sharma Vs. Steel Authority of India Ltd. & Ors.** reported in **(2010) 2 SCC 114** has held in para 39 as under:-



"39. If the primary object as highlighted in Kensington Income Tax Commrs., [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

18. The Apex Court in the case of **Dalip Singh Vs. State of UP** reported in **(2010) 2 SCC 14** has held in para 2 as under:-

"2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

19. Again the Hon'ble Apex Court in the case of **Moti Lal Songara Vs. Prem Prakash @ Pappu & Anr.** reported in **(2013) 9 SCC 199** has held in paragraphs 19 and 20 as under:-

"19. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the respondent-accused is



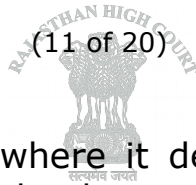
justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the Revisional Court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Anyone who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud upon the court, and the maxim suppressio veri, expressio falsi i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the Revisional Court. It can be stated with certitude that the respondent-accused tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum.

20. The High Court, as we have seen, applied the principle "when infrastructure collapses, the superstructure is bound to collapse". However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand."

20. The Hon'ble Apex Court in the case of **Kishore Samrite Vs. State of Uttar Pradesh and Ors.** reported in **(2013) 2 SCC 398** has held with regard to practice and procedure, abuse of process of Court/law/fraud on the Court. The principles governing the obligations of a litigant while approaching the Court and the consequences of abuse of process enumerated in this judgment. This Court would like to refer paragraph 8 of the said judgment which reads as follows:

"8. The Apex Court in the case of Kishore Samrite v. State of Uttar Pradesh [(2013) 2 SCC 398] held in paragraph 32 with regard to practice and procedure, abuse of process of Court/law/fraud on the Court. The principles governing the obligations of a litigant while approaching the Court and the consequences of abuse of process enumerated in this judgment. The Apex Court held that the cases of abuse of process of Court and such allied matters have been arising before the Courts consistently. It is observed that this Court has





had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the Court for redressal of any grievance and the consequences of abuse of process of Court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of case. These are:

32.1 Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief.

32.2. The people, who approach the court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6. The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy costs.





32.7. Wherever a public interest is invoked, the court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

32.8. The court, especially the Supreme Court, has to maintain the strictest vigilance over the abuse of process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the court should endure to take cases where the justice of the lis well justifies it."

21. Having taken note of all these material available on the record and also the principles laid down by the Hon'ble Apex Court in the judgments referred supra, it discloses that the accused Indira Kumari has got the bail order dated 07.03.2024 from this Court by suppressing the material evidence i.e. the statements of the last seen witnesses – Anil Sharma and Mohammad Kaif recorded under Section 164 Cr.P.C. Had the said material facts were brought to the notice of this Court, while exercising the discretion, then the result/order would have been otherwise. In the case of **Moti Lal Songara** (supra), the Hon'ble Supreme Court has clearly held that if any order is obtained by suppression of facts, then it is an obligation of the Court to set aside the said order. Such person cannot be allowed to take advantage of such order. It has also been held that the victim of the offence has as much as right to get justice as the accused.

22. In view of the discussion made herein above, it is clear that the accused Indira Kumari has secured the bail order dated 07.03.2024 by suppressing and concealing the statements recorded under Section 164 of Cr.P.C. Such act of the accused





Indira Kumari is not sustainable in the eye of law and her bail order dated 07.03.2024 is liable to be recalled. Accordingly, the same is hereby recalled and the bail granted to the accused Indira Kumari is hereby cancelled. The Superintendent of Police, Kota as well as Station House Officer, Police Station, Jawahar Nagar, Kota City are directed to take her in custody and subject her for trial.

23. Now this Court proceeds to decide the bail application of the accused Anuj Pokharna and Rishabh Raj. Their whole claim is based on parity and they are claiming parity with the accused Indira Kumari, who was granted bail by this court on 07.03.2024. No other arguments were raised by them on the merits of the case.

24. The question which remains for consideration of this Court is whether these two accused can claim negative parity by claiming that their case is similar to the accused Indira, who sought bail on the basis of suppressing and concealing the material evidence/statements of the witnesses recorded under Section 164 Cr.P.C.

25. It is the settled proposition of law that the principle of parity is based on positive equality. If any illegality has been committed by any individual or any wrong order has been passed by a judicial forum, the other person cannot claim the same parity as a matter of right and cannot ask the court to pass the same order by repeating or multiplying the same illegality or for passing a similar wrong order. As the Hon'ble Apex court in the case of **Tarun Kumar v/s Assistant Director Directorate of Enforcement, SLP (Criminal) No.9431/2023** has held in Para 19 as under:-

"19. It is axiomatic that the principle of parity is based on the guarantee of positive equality before

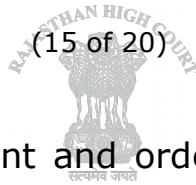


law enshrined in article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the Court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision”.



26. Hon'ble Apex Court in the case of **Aminuddin Vs. State of UP and Anr., SLP (Criminal) No.5029/2021** has held that parity in bail cannot be claimed merely because the co-accused has been granted bail ignoring the relevant considerations. It has been held in Para 12 to 19 as under:-

“12. A perusal of the order impugned makes it clear that in essence, the principal part of submissions before the High Court on behalf of the present respondent No. 2, while seeking bail, had been that the co-accused persons had been granted bail and he was entitled to the same relief on the ground of parity because his case was standing on identical footing. The other submissions had been that the respondent No. 2 was in custody since 02.09.2019; that he had no criminal history; and that trial was likely to take time. The High Court did not consider any other aspect of the matter at all and proceeded to grant bail to the respondent No. 2 only for the reason that the so-called identically placed co-accused persons had already been granted bail. The fact that the order granting bail to the co-accused Fahim met with its strong disapproval by this Court remains rather indisputable.

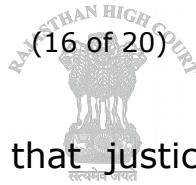


13. In the judgment and order dated 15.03.2021, this Court took note of the fact that the High Court had granted bail to the co-accused while ignoring the relevant considerations and with a mere reference to the mandate of Article 21 of the Constitution of India. The relevant observations and comments by this Court in the judgment and order dated 15.03.2021 could be usefully extracted as under: -

"7 The circumstances would indicate that a brutal murder has been committed of the son of the appellant. The postmortem report would indicate as many as eight ante mortem injuries. The offence is alleged to have taken place in broad day light. The First Information Report being Case Crime No 438 of 2019 was registered at about 2108 hours, within a period of four hours of the incident which is alleged to have taken place at 1715 hours on the same day. After the investigation was completed, the charge-sheet has been submitted before the competent court under Section 173 of the Code of Criminal Procedure 1973. In several judgments of this Court, the need for the High Court to adduce reasons while granting bail has been underscored. At this stage, we may advert to the recent decision in Mahipal vs Rajesh Kumar , which was relied on by Ms Bansuri Swaraj, learned counsel for the State of UP. Speaking for a two-Judge Bench, one of us (Justice D Y Chandrachud, J) observed:

"25. Merely recording "having perused the record" and "on the facts and circumstances of the case" does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on





the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.

27. Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court."

8. In the present case, the High Court has merely observed that bail was being granted after considering the submissions and having regard to the "larger mandate of Article 21". There can be no manner of doubt that the protection of personal liberty under Article 21 is a constitutional value which has to be respected by the High Court, as indeed by all courts. Equally, in a matter such as the present, where a serious offence of murder has taken place, the liberty of the accused has to be necessarily balanced with the public interest in the administration of criminal justice system which requires that a person who is accused of a crime is held to account. Having regard to the settled principles which govern the grant of bail in a matter involving a serious offence in a case such as the present, we are of the view that the order of the High Court does not clearly pass muster. No case for the





grant of bail is made out. In granting bail, the High Court has failed to notice relevant considerations which ought to have been, but have not been taken into account.

9 In the above circumstances, we allow the appeal and set aside the impugned judgment and order of the High Court dated 25 February 2020. As a consequence of this order, the second respondent shall surrender forthwith."



14. The position aforesaid equally applies to the present case too. Moreover, when the bail granted to co-accused person has been disapproved by this Court and such grant of bail to co-accused had been the only reason for which the bail was granted to the respondent No. 2, the impugned order is liable to be set aside.

15. The submissions on behalf of the respondent No. 2 that there was no proper contest on behalf of the said co-accused in this Court could hardly take away the substance of the dictum of this Court. It is clear that in said case, the High Court had proceeded in a rather cursory manner and without regard to the salient feature of the case at hand, being that of gruesome day-light murder of the son of the appellant with 8 grievous injuries, including those of incise wounds and stab wounds on and around the neck and the chest.

16. As regards the case of respondent No. 2, we are constrained to observe that even if the High Court proceeded to consider the fact that the co-accused person had been granted bail, at least this much was required that the relevant facts of the case were indicated as also the reasons as to how the case of respondent No. 2 was treated to be identical. The relied upon order had been suffering from failure on the part of the High Court to notice the relevant considerations and the impugned order equally suffers from the shortcoming that the relevant features of the case have not at all been considered by the High Court.



17. The submissions that the respondent No. 2 had been in custody since 02.09.2019 or that he had no negative antecedents, by themselves, do not make out a case for grant of bail, looking to the seriousness of crime in question. In this regard, the submissions of the Investigating Officer cannot go unnoticed that while the incident took place on 10.07.2019 and one of the accused persons was arrested on 11.07.2019, the other accused persons remained absconding and the respondent No. 2 surrendered as late as on 02.09.2019. So far the questions relating to the role assigned to the respondent No. 2 or about the doubt on the prosecution case, suffice it to observe at the present stage that the respondent No. 2 has specifically been named in the FIR as one of the assailants; and looking to the nature of the accusations and the nature of injuries, the prosecution case, prima facie, cannot be dubbed as fanciful or improbable.

18. For what has been noticed hereinabove, the impugned order is required to be set aside.

19. We have pondered over the question as to the order that needs to be passed in this matter finally. It is noticed that in the judgment and order dated 15.03.2021, this Court disapproved the order dated 15.02.2020 granting bail to the co-accused and directed him to surrender forthwith. More or less the same position would apply to the present case too. Herein, the order granting bail was passed on 03.12.2020 and the present matter was initially taken up for consideration on 12.07.2021. Even if one witness, that is, the present appellant, has already been examined, the other witnesses, including the eye-witnesses, are to be examined in the trial. In the given circumstances and in the interest of justice, we also deem it proper to leave it open for the respondent No. 2 to apply for bail afresh after surrendering and at an appropriate stage”.

27. A principle, axiomatic in this country’s constitutional lore is that there is no negative equality. In other words, if there has





been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In **Basawaraj & Anr. v. Special Land Acquisition Officer, (2013) 14 SCC 81** the Hon'ble Apex Court ruled that:

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."

Other decisions have enunciated or applied this principle (Ref: Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745; Anand Buttons Ltd. v State of Haryana, (2005) 9 SCC 164 K.K. Bhalla v. State of M.P., (2006) 3 SCC 581; Fuljit Kaur v. State of Punjab, (2010) 11 SCC 455; and Chaman Lal v. State of Punjab, (2014) 15 SCC 715 and). Recently, in The State of Odisha v. Anup Kumar Senapati, 2019 (19) SCC 625 the Hon'ble Apex Court observed as follows:

"If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision".



28. The law of parity would be applied in granting bail to an accused, where the co-accused has been granted bail on similar set of circumstances. Law of parity is a desirable rule and is applicable where the case of the accused is identical with the co-accused, who has been granted bail. Simply because the co-accused has been granted bail is in itself not a criteria for granting bail if the Court comes to the conclusions that the co-accused has been granted bail without consideration of the evidence available against him on the record.

29. Simply parity cannot be the sole criteria for grant of bail, if after scrutiny and examination of the record, the facts comes on the record that correct facts and evidence were not brought into the notice of the Court when indulgence of bail is granted to the co-accused. Hence the principle of parity as universal application or a straight jacket formula cannot be applied.

30. Since the order dated 07.03.2024, granting bail to the co-accused Indira Kumari, has been recalled, the claim of the petitioners Anuj Pokharna and Rishabh Raj, on the ground of parity, fails and accordingly, their bail applications stand rejected.

31. Office is directed to send a copy of this order to the Superintendent of Police, Kota and the S.H.O., Police Station, Jawahar Nagar, Kota City for necessary compliance.

(ANOOP KUMAR DHAND),J

Diksha Mishra, Jr.PA