

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No 852 of 2020
(Arising out of SLP (Crl) No 5537 of 2020)

Girraj

Appellant(s)

Versus

Narendra @ Munder and Another

Respondent(s)

ORDER

JUDGMENT

Dr Dhananjaya Y Chandrachud, J

- 1 Leave granted.
- 2 By an order dated 5 August 2020, a Single Judge of the High Court of Judicature at Allahabad enlarged the first respondent on bail in connection with Case Crime No 414/2019 registered under Sections 147, 148, 149, 302, 307, 323, 326, 341 and 506 of the Indian Penal Code at Police Station Rabupura, Gautam Budh Nagar, Uttar Pradesh. The State of Uttar Pradesh has been impleaded as the second respondent.
- 3 The appellant is the original complainant whose sons, Gajendra aged 34 years and Akash aged 22 years, were killed. Two other persons, Sunil and Jeetu, out of the four others present along with the deceased, are alleged to

have been seriously injured in the course of the incident. The first information report¹ was lodged on 30 November 2019 at 1743 hours. The FIR refers to the fact that there was an enmity between the accused and, the complainant and his sons due to party politics. The FIR mentions an earlier incident on 24 October 2019, when five of the accused (Sundar, Dharmendra, Monu, Kiranpal and Ompal) had attacked Akash at Chambe in Mirzapur with an intent to kill him. Akash had allegedly sustained a head injury after being assaulted with an iron rod and fire-arm injury in respect of which a first information report was lodged. Two of the accused (Rakesh and Satish) had also allegedly assaulted the appellant's sons in the morning of 29 November 2019 and threatened them with death. The incident concerning the present case is alleged to have taken place at night, on 29 November 2019. One of the deceased, Gajendra, the son of the appellant, was conducting a gym and after closing his establishment, he was proceeding in his vehicle from village Rabupura to village Rampur Bangar together with Akash, who was in another vehicle. Two other persons, Sunil and Deepak are alleged to have been in a third vehicle. Jeetu and Subhash were proceeding in a fourth vehicle. When these persons reached a particular spot at around 8:30 pm, their passage was found to be blocked by a bullock cart. The eight accused, including the first respondent, were allegedly present at the spot armed with rifles, guns and country-made pistols for an ambush. They are alleged to have surrounded the four vehicles with an intention of assaulting the complainant's sons. Accused Mulla is alleged to have fired with his rifle at Gajendra, while accused Bhupan is alleged to have fired with his rifle at Akash. Both Gajendra and Akash were killed on the spot. Sunil and Deepak

1 'FIR'

who were in the third vehicle are alleged to have got down after seeing the occurrence. Jeetu and Subash also came out of the fourth vehicle. Among the injured were Sunil and Jeetu. After the FIR was lodged, the first respondent was arrested on 6 December 2019.

- 4 The First Additional Sessions Judge, Gautam Budh Nagar by an order dated 10 February 2020, dismissed the application for bail, noting that there were specific allegations in the first information report and that the postmortem report of both Gajendra and Akash indicated that they had sustained fire-arm injuries of serious nature. The High Court, thereafter, upon being moved in an application for bail by the first respondent, allowed the application by its order dated 5 August 2020. The reasons which have weighed with the High Court in allowing the application for bail are extracted below:

“In view of above arguments, looking to the fact that accused applicant has no criminal history and that indiscriminate fire is said to have been made by all the accused including the applicant and has caused injuries to only one injured Jeetu apart from two deceased, it cannot be determined as to who has caused the said injury, taking into consideration the quantum of punishment, nature of offence and period of detention, without expressing any opinion on the merits, this case is found to be a fit case for bail.”

- 5 Mr. Rajiv Garg, learned counsel appearing on behalf of the appellant submits that each of the reasons which have weighed with the High Court is specious and could not have founded the basis of an order enlarging the first respondent on bail under Section 439 of the Code of Criminal Procedure 1973. In the present case, it has been submitted that there are specific allegations in the first information report and the presence of the first respondent is evident from the fact that according to the first respondent,

even he had lodged an application under Section 156(3) of the CrPC. Since the case of the first respondent is that there are cross complaints, it is evident that the first respondent has not been falsely roped in. Elaborating the submission, Mr. Garg urged that the allegation is that the first respondent was a member of an unlawful assembly and once the provisions of Section 149 of the Penal Code are attracted, it was manifestly erroneous for the High Court to enlarge the first respondent on bail on the basis that in a case of indiscriminate firing, it could not be determined as to who had caused the injuries. Moreover, it has been submitted that the statements of the injured Jeetu (which were referred to in the counter affidavit filed by the State) indicate that the first respondent had also fired at the deceased and the injured during the course of the incident. The attention of the court has been drawn to the fact that five of the co-accused were enlarged on bail, though it has been submitted on behalf of the appellant that the order granting bail in the present case has been followed in the other cases.

- 6 On the other hand, Mr. Rakesh Kumar Khanna, learned senior counsel appearing on behalf of the first respondent with Mr. Pradeep Kumar Yadav, learned counsel submitted that (i) the incident is alleged to have taken place at 8:30 pm on 29 November 2019; (ii) the postmortem took place at 9:15 am on 30 November 2019; and (iii) the FIR was lodged at 5:43 pm on 30 November 2019. It has been submitted that these events would indicate that the delay in lodging the FIR is attributable to the fact that it is only after the nature of the injuries were verified in the course of the postmortem, that the FIR came to be registered and the chance of a false implication cannot be ruled out. Apart from this, it has been submitted that the learned Sessions

Judge had taken note of the submission of the first respondent that, as a matter of fact, the complainant side had come to the habitation of the accused and several of the accused persons had suffered pellet injuries. Finally, it has also been submitted that since an FIR was not registered at the behest of the accused, an application under Section 156(3) CrPC has been filed before the trial court.

- 7 Mr Sarvesh Singh Baghel, learned counsel appearing on behalf of the State submits that the High Court was not justified in granting bail having regard to the fact that the first respondent has been specifically named by one of the injured witnesses, Jeetu and there is a specific role which is ascribed to him in the FIR.
- 8 While analyzing the rival submissions, we must at the outset note the considerations which weighed with the High Court. The High Court has basically adverted to the following reasons:
- (i) The first respondent has no criminal history;
 - (ii) Indiscriminate firing is stated to have been made by all the accused including the first respondent upon Jeetu and the two deceased and hence it cannot be determined who has caused the injuries;
 - (iii) Taking into consideration the quantum of punishment, nature of offence and period of detention, the case was found fit for grant of bail.
- 9 The last of the observations above, is an omnibus observation. The serious nature of the offence and the quantum of punishment would, as explained hereafter, militate against the grant of bail in the facts of the present case. As a matter of fact, it is evident from the earlier part of the observations of

the High Court which have been extracted above, that the Court did notice the fact that it is alleged that there was indiscriminate firing by the side of the accused including the first respondent. The attention of the court has been drawn to the fact that in the statement of one of the injured, Jeetu, it has been specifically stated that the first respondent was among those who had fired at the deceased and Jeetu. Above all, the High Court has completely ignored the circumstance that in terms of the allegations in the FIR, there was an unlawful assembly and it is as a consequence of this that the provisions of Section 149 have been attracted.

- 10 A serious offence has taken place involving the death of two sons of the appellant. Though, the High Court has referred to the nature of the offence, it has failed to notice that the seriousness of the offence in the present case would militate against the grant of bail in a case such as the present, where there are not only specific allegations in the FIR, but the statement of one of the injured witnesses. The High Court has also ignored the allegation of enmity between the two groups on account of party politics, which have allegedly translated into instances of threats and assault of appellant's sons as discussed above. Moreover, the submission of the first respondent that the failure of the police to register an FIR at the behest of the accused led them to file an application under Section 156(3) CrPC, is clearly indicative of the fact that *prima facie* at this stage, the presence of the first respondent cannot reasonably be doubted. In his counter affidavit, the first respondent had, in fact, sought to explain his presence by stating that he was merely passing from the place.
- 11 A two judge Bench of this Court, in **Panchanan Mishra vs Digambar**

Mishra² cancelled the bail of accused persons who had acted in an unlawful assembly and had been identified by an injured eye-witness. In overturning the bail order of the High Court, which made a note of the rival submissions on whether any injury was directly attributable to the respondent at hand, this Court had noted-

“13. ...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 and if there is delay in such a case the underlying object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution. 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.

18. Looking into the gravity of the crime, apprehension of tampering with the evidence and threats to the life of the complainant and other witnesses given by the accused, we are of the opinion that the High Court did not take into proper account the grave apprehension of the prosecution that there was a likelihood of the accused persons tampering with the prosecution witnesses. In the peculiar nature of the case revealed from the allegations and the position of the accused in relation to the eyewitnesses it was incumbent upon the High Court to give proper weight to the serious apprehension of the complainant which was urged before it in resisting the application for bail. The High Court, in our opinion, had failed to properly appreciate the entire position. Therefore, this Court will be

justified under Article 136 of the Constitution in interfering with the discretion exercised by the High Court in granting the bail to the accused persons. The High Court has not bestowed its attention on these above factors apart from others. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail. The case on hand is one such which would justify our interference under Article 136 of the Constitution with a discretion exercised by the High Court in granting bail to the respondents in this case....”

- 12 Having regard to the conspectus of facts and our analysis above, we are clearly of the view that in granting bail, the High Court has led itself to be governed by several circumstances which are extraneous to the proper exercise of discretion under Section 439 of the CrPC. Merely observing that there was indiscriminate firing and it was difficult to ascertain as to who had caused the injury is manifestly an erroneous approach to the issue for two reasons. First, as the material at this stage indicates, there are specific allegations against the first respondent. Second, if as alleged, the first respondent was a member of an unlawful assembly, the provisions of Section 149 would stand attracted. In this backdrop, having regard to the fact that a serious offence of murder has taken place allegedly motivated by previous enmity on account of party politics, leading to the death of both the sons of the appellant, we are of the view that the High Court was in error in granting bail to the first respondent. The High Court having granted bail for reasons which are extraneous to the exercise of the discretion under Section 439 CrPC, we are constrained to interfere in the exercise of our jurisdiction under Article 136 of the Constitution to cancel the bail of the first respondent.

- 13 We, accordingly, allow the appeal and set aside the impugned judgment and order of the Single Judge of the High Court of Judicature at Allahabad dated 5 August 2020 in Criminal Misc Bail Application No 14060 of 2020. The first respondent shall accordingly surrender forthwith.
- 14 We clarify that the above observations are *prima facie* confined to the issue as to whether a case for the grant of bail to the first respondent was made out and shall not affect the merits of the trial.
- 15 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[M R Shah]

New Delhi;
December 11, 2020
CKB

ITEM NO.22

Court 3 (Video Conferencing)

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No.5537/2020

(Arising out of impugned final judgment and order dated 05-08-2020 in CRMA No.14060/2020 passed by the High Court of Judicature at Allahabad)

GIRRAJ

Petitioner(s)

VERSUS

NARENDRA @ MUNDER & ANR.

Respondent(s)

(With appln.(s) for I.R. and IA No.100615/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.100617/2020-EXEMPTION FROM FILING O.T. and IA No.100614/2020-PERMISSION TO FILE PETITION SLP)

Date : 11-12-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Rajiv Garg, Adv.
Mr. T. L. Garg, AOR

For Respondent(s) Mr. Rakesh Kumar Khanna, Sr. Adv.
Mr. Pradeep Kumar Yadav, Adv.
Mr. Vishal Thakre, Adv.
Mr. Sanjeev Malhotra, AOR

Mr. Sarvesh Singh Baghel, AOR
Mr. Gaurav Agrawal, Adv.
Ms. Shivranjani Ralawata, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1 Leave granted.

- 2 The appeal is allowed in terms of the signed order.
- 3 Pending appeals, if any, stand disposed of.

(CHETAN KUMAR)

A.R. -cum-P.S.

(Signed Reportable Judgment is placed on the file)

(SAROJ KUMARI GAUR)

Court Master