Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1545 OF 2013
(Arising out of S.L.P. (Crl.) No. 7678 of 2013)

Ranjit Singh ... Appellant

Versus

State of M.P. and others ...Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. This appeal, by special leave, is directed against the order dated 16.8.2013 passed by the High Court of Madhya Pradesh, Bench at Gwalior, in M.Cr.C. No. 3370

of 2013 whereby the learned single Judge has cancelled the order of bail granted by learned first Additional Sessions Judge, Guna vide order dated 6.2.2013 to the appellant.

3. The facts giving rise to the present appeal are that on 14.8.2012 an FIR bearing No. 376/2012 was registered at Police Station, Kotwali, Guna, for offences punishable under Sections 307, 147, 148, 149, 120B read with Section 34 of the Indian Penal Code (IPC) and Sections 25 and 27 of the Arms Act alleging that the appellant along with one Abhishek Hada and two unknown persons had come to the market place where an altercation ensued between them and the informant and others. It was alleged in the FIR that two of these four persons were carrying weapons and they fired at the informant, respondent No. 3 herein, and one Dilip Singh. After the injured succumbed to the injuries, Section 302 IPC was added. The appellant apprehending arrest filed an application under Section 438 of the Code of Criminal Procedure (CrPC) before the

first Additional Sessions Judge, Guna, who vide order dated 14.9.2012 rejected the same. Being unsuccessful in obtaining an anticipatory bail the appellant filed M.Cr.C. No. 8023 of 2012 which was dismissed as withdrawn.

4. As the facts would further uncertain, after a gap of sometime the appellant preferred the second application for grant of anticipatory bail and the learned single Judge in M.Cr.C. No. 701 of 2013, by order dated 1.2.2013, took note of the fact that the petitioner therein was an accused in crime No. 376/12 registered for commission of offences punishable under Sections 307, 302/34, 147, 148, 149, 120-B IPC and Sections 25 and 27 of the Arms Act and the submissions canvassed on behalf of the learned counsel for the accused and the learned counsel for the prosecution and ultimately directed as follows: -

> "Considering the nature of the allegation and the evidence collected in the case-diary, the petition is disposed of with a short direction that the petitioner shall surrender before the Competent

Court and shall apply for regular bail and the same shall be considered upon furnishing necessary bail bond."

5. After the said order came to be passed, the appellant moved two applications, one under Section 44(2) and the other under Section 439 CrPC before the learned Sessions Judge, Guna, who transferred the applications to the learned Additional Sessions Judge for consideration. The learned Additional Sessions Judge, Guna, admitted the appellant to bail on imposition of certain conditions. We shall refer to the said order in detail when we deal with the legal propriety of the same and the cancellation of the same by the High Court by the impugned order.

6. At this juncture, it is apposite to note that the wife of the deceased filed S.L.P. (Crl.) No. 2055 of 2013 assailing the order dated 1.2.2013 passed by the learned single Judge in M.Cr.C. No. 701 of 2013. This Court allowed the application for permission to file the special leave and thereafter observed as follows: -

> "Although, we are of the view that this special leave petition has no substance, since the order under challenge merely directed the respondent-accused to surrender and pray for regular bail."

7. Be it noted, in the said order taking note of the grievance that the wife and children of the deceased were threatened by the accused this Court granted liberty to apply to the Superintendent of Police, Guna, M.P. and also the Station House Officer of Police Station Kotwali, Guna and a direction was issued that if such application would be made, the said authorities shall look into the matter with all seriousness and take appropriate steps for the safety of the wife and the children. This Court also took note of the fact that an application for modification of the order was pending before the Division Bench of the High Court and, accordingly, observed that the Division Bench may consider disposing of the said application as expeditiously as possible.

8. The Division Bench, while dealing with the application for modification, i.e., M.Cr.C. No. 971 of 2013, vide

order dated 15.3.2013, reproduced the order passed in M.Cr.C. No. 701 of 2013 and ascribing certain reasons modified the order and set aside the order dated 6.2.2013 granting regular bail by the learned Additional Sessions Judge to the accused.

9. Grieved by the aforesaid order, the appellant preferred Special Leave Petition (Crl.) No. 2826 of 2013. This Court on 4.4.2013, while dealing with the legal substantiality of the said order, opined thus: -

> "Having heard learned counsel for the parties, we are of the view that no useful SLP (Crl.) 2826/13 purpose will be served in keeping this matter pending here in view of the fact that the Code of Criminal Procedure does not provide for any review against an order passed in criminal proceedings.
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> The proceedings before the Division Bench was entirely misconceived. In the event the order of the learned Single Judge of the High Court was misconstrued by the learned trial court while granting bail to the petitioner, the remedy of the complainant would be to challenge the same before the High Court.
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> Accordingly, the Special Leave Petition is allowed, the order of the Division Bench of the High Court impugned in the Special Leave Petition is set aside. The complainant will be at liberty to

proceed against the order of the trial court, granting bail, if so advised."

10. It may be noted here that a grievance was made with regard to grant of police protection and this Court taking note of its earlier order dated 6.3.2013 made certain observations.

11. At this stage, we may sit in a time machine and take note of certain proceedings and the orders passed therein as they have been emphatically stressed upon by Mr. Anupam Lal Das, learned counsel for the appellant. An application for cancellation of bail was filed before the learned 1st Additional Sessions Judge, Guna by Dinesh Raghuvanshi, the informant, who, on 2.4.2013, withdrew the application as by that time the Division Bench had already set aside the order granting bail. It is also necessary to state that the Additional Public Prosecutor, Guna, had also filed application for cancellation of bail on 11.2.2013. An assertion has been made by learned counsel for the appellant that the same has been withdrawn when the High Court was

moved for cancellation of the order granting bail. We have referred to these events, as the learned counsel has endeavoured hard to impress upon us that there has been suppression of facts by the informant as well as the State, but we have no scintilla of doubt that the non-reference to the said facts or non-mentioning of the same has, in fact, no impact on the merits of the impugned order passed by the High Court.

12. Coming back to the chronology of narration, after disposal of the Special Leave Petition (Crl.) 2826 of 2013, the informant and the wife of the deceased filed an application under Section 439(2) CrPC for cancellation of bail order dated 6.2.2013 passed by the learned 1st Additional Sessions Judge, Guna in Bail Application No. 13 of 2013. The learned single Judge, by the impugned order, narrated the factual matrix, referred to the order passed by the High Court under Section 438 CrPC, took note of the submissions advanced at the Bar and after referring to certain authorities which deal with cancellation of bail, the

allegations made in the FIR, the proceedings before the High Court and this Court, import of the order passed in M.Cr.C. No. 701 of 2013 and thereafter stated thus: -

> "In the instant case, as pointed hereinabove, the learned First ASJ has not taken pain to consider the aforesaid aspects. When this Court has expressly given the direction that respondent No. 1 shall surrender before the Competent Court and shall apply for regular bail and the same shall be considered, it was the bounden duty of the learned First ASJ to consider whether respondent No. 1 is entitled for the benefit of bail or not. It is unfortunate that despite the objection raised on behalf of the petitioners that this Court has not granted the bail, the learned First ASJ, Guna, did not think it fit to seek the clarification from this Court. Instead of doing so, the learned First ASJ has granted the benefit of bail to respondent No. 1."

13. Thereafter, the learned single Judge referred to the criminal antecedents of the accused and, ultimately, passed the following order: -

> "In view of the aforesaid analysis, considering that learned First ASJ, Guna, while granting bail, misread the order of this Court passed in M.Cr.C. No. 701/13 on 1.2.13, has ignored relevant material and has not considered the well recognized principles underlying the power to grant bail and further that there is prima facie material that after releasing on bail, respondent No. 1 gave threatening to the widow of the

> deceased and her children and obstructed the course of justice, the petition deserves to be allowed. Hence, it is allowed and the bail granted by learned First ASJ, Guna, vide order dated 6/2/2013 to respondent No. 1 is hereby cancelled. Bail Bonds of respondent No. 1 are cancelled. It is directed that respondent No. 1 shall surrender before the learned First ASJ, Guna, and he shall be taken into custody forthwith."

14. We have heard Mr. Anupam Lal Das, learned counsel appearing for the appellant, Mr. Surendra Singh, learned senior counsel appearing for respondent Nos. 2 and 3, and the learned counsel for the State.

15. First, we shall deal with the order passed by the High Court in M.Cr.C. No. 701 of 2013. We have already reproduced the same. The said order was the subject-matter of challenge in Special Leave Petition (Crl.) No. 2055 of 2013 and this Court has observed that the order under challenge was a mere direction to the accused to surrender and pray for bail. Thus, this is the interpretation placed by this Court on that order. It is apt to mention here that prior to passing of the said order the learned Additional Sessions Judge had allowed the application for grant of regular bail. The Division

Bench entertaining an application under Section 482 CrPC had modified the order dated 1.2.2013 passed in M.Cr.C. No. 701 of 2013 and on that basis had cancelled the order granting bail in favour of the accused. The said order was assailed before this Court in Special Leave Petition (Crl.) No. 2826 of 2013 and it was set aside holding that the order was wholly misconceived as the Division Bench could not have reviewed the earlier order under Section 482 CrPC. However, as stated hereinbefore, this Court clearly stated that in the event the order of the learned single Judge of the High Court is misconstrued by the learned trial Court while granting bail to the accused, remedy of the complainant would be to challenge the same before the High Court. There cannot be any trace of doubt that the challenge to the grant of bail order by the learned Additional Sessions Judge was kept alive by this Court and, accordingly, application was filed before the High Court which has been dealt with by the learned single Judge by the impugned order.

16. The thrust of the matter is whether the learned trial Judge has actually misconstrued the order and granted bail or has really considered the necessary facets as required to be considered while entertaining an application under Section 439 CrPC. We have bestowed our anxious consideration and carefully scrutinized the order dated 6.2.2013 passed by the learned Additional Sessions Judge, Guna. It is manifest that the learned trial Judge accepted the application for surrender and thereafter referring to the order passed in M.Cr.C. No. 701 of 2013 has opined thus: -

> "In the aforementioned case the Hon'ble High Court vide its order dated 01.02.2013 passed the orders with the directions that the applicant will surrender himself before the Competent Court and he will submit his application for regular bail, and the said concerned court will accept the said application after furnishing of bail bonds. Therefore, the Hon'ble High Court has issued the orders to the competent court in favour of the applicant. In compliance of order dated 01.02.2013 passed by the Hon'ble High Curt in MCRC Case No. 701/13 u/s 438 Cr.P.C. surrendered before the Ld. Court, and because for trial of case u/s 302 IPC the Ld. Court is the Competent Court, hence the application of surrender of applicant may be accepted and the

bail application u/s 439 Cr.P.C. submitted by the applicant may please be decided."

17. It is apt to note here that number of times the learned Additional Sessions Judge has referred to the order passed by the High Court and at one stage he has stated as follows: -

> "... the applicant had submitted a bail application being No. 154/2012 u/s 438 Cr.P.C. before the Ld. Session Judge. The said application was rejected on 14.09.2012 by the Ld. First Additional Session Judge Shri R.P. Mankalia and being aggrieved with the said order, the applicant filed a petition being application No. M.C.R.C. No. 701/13 u/s 438 Cr.P.C. before the Hon'ble High Court of Madhya Pradesh at Gwalior Bench. In this matter, the Hon'ble High Court passed its judgment and order dated 01.02.2013 with the directions that the applicant will surrender himself before the competent court and the applicant will submit his application for regular bail and the concerned court will accept the application and bail bonds of the applicant. Therefore the Hon'ble High Court has issued the directions for the Competent Court in favour of the applicant."

18. After so stating the learned trial Judge has referred to the submissions, application for remand for further investigation and, eventually, passed the following order: -

> "It has been revealed after perusal of case and case diary of the case that the bail application of the co-accused persons has already been admitted by the Hon'ble High Court. Offence of the applicant/ accused person is not different from the offence of other co-accused persons. Applicant himself has presented himself before the Ld. Session Judge, Guna and he also presented himself before this Court. After hearing all the parties by the Hon'ble High Court of Madhya Pradesh at Gwalior Bench titled Ranjit Singh Versus State of Madhya Pradesh in M.C.R.C. No. 701/13, the Hon'ble High Court has passed the orders for furnishing necessary bail bonds, hence, the application filed by the applicant u/s 439 Cr.P.C. is justified and found proper, therefore, the application of the applicant is accepted and he may be enlarged on bail on furnishing two bail bonds of sureties of Rs.75,000-75,000 each and personal bail bond of Rs.1,50,000/- to the satisfaction of Chief Judicial Magistrate, Guna."

19. We have reproduced the said order in extenso to appreciate whether as a matter of fact the learned Additional Sessions Judge has misconstrued the import of the order or decided the application under Section 439 CrPC regard being had to the considerations that are to be kept in mind while dealing with such an application. As is evincible, there has been no deliberation with regard to the requirements under Section 439 CrPC. The order read in entirety clearly

reflects that the learned Additional Sessions Judge had an erroneous perception and fallacious understanding of the order passed by the High Court and it is clear as day that the regular bail was granted on the bedrock of the order passed by the High Court. He had absolutely misconstrued the order. Thus, the order passed by the learned Additional Sessions Judge is totally unjustified and illegal.

20. It needs no special emphasis to state that there is distinction between the parameters for grant of bail and cancellation of bail. There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court. We have already referred to various paragraphs of the order passed by the High Court. We have already held that the learned trial Judge has

misconstrued the order passed by the High Court. However, we may hasten to add that the learned single Judge has taken note of certain supervening circumstances to cancel the bail, but we are of the opinion that in the obtaining factual matrix the said exercise was not necessary as the grant of bail was absolutely illegal and unjustified as the court below had enlarged the accused on bail on the strength of the order passed in M.Cr.C. No. 701 of 2013 remaining oblivious of the parameters for grant of bail under Section 439 Cr.P.C. It is well settled in law that grant of bail though involves exercise of discretionary power of the court, yet the said exercise has to be made in a judicious manner and not as a matter of course.

21. In ***Chaman Lal* v. *State of U.P.***[1], this Court, while dealing with an application for bail, has stated that certain factors are to be borne in mind and they are: -

> "…. (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (ii) reasonable apprehension

[1] (2004) 7 SCC 525

of tampering with the witness or apprehension of threat to the complainant, and (iii) prima facie satisfaction of the court in support of the charge."

22. In ***Prasanta Kumar Sarkar* v. *Ashis Chatterjee***[2], this Court, while emphasizing on the exercise of discretionary power generally has to be done in strict compliance with the basic principles laid down in plethora of decisions of this Court, has observed as follows: -

"9… among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to be believed that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behavior, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

[2] (2010) 14 SCC 496

(viii) danger, of course, of justice being thwarted by grant of bail."

23. The said principles have been reiterated in ***Ash Mohammad* v. *Shiv Raj Singh alias Lalla Babu and another***[3].

24. In this context, we may refer with profit to the recent pronouncement in ***Central Bureau of Investigation* v. *V. Vijay Sai Reddy***[4] wherein the learned Judges have expressed thus: -

"**28**. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/ State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "*reasonable grounds for believing*" instead of *"the evidence"* which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce *prima facie* evidence in support of the charge. It is not expected, at this stage, to have the evidence

[3] (2012) 9 SCC 446
[4] 2013 (7) SCALE 15

establishing the guilt of the accused beyond reasonable doubt."

25. We repeat at the cost of repetition that the aforesaid aspects have not been kept in view by the learned Additional Sessions Judge and, therefore, we are obliged in law to set aside the order passed by him and we so do. In view of the extinction of the order granting bail, the appellant shall surrender forthwith to custody failing which he shall be taken to custody as per law. Liberty is granted to the appellant to move an application for grant of regular bail. Needless to say, on such application being moved, the same shall be considered on its own merits regard being had to the parameters which have been laid down in aforestated authorities.

26. We may hasten to add that because of our above direction the judgment of the High Court is required to be modified as the learned single Judge has cancelled the bail by taking certain other aspects into consideration. We may clearly state that it would have

been appropriate on the part of the High Court to set aside the order of granting bail by the learned Additional Sessions Judge and permit the accused to surrender to custody and move an application for regular bail. Accordingly, the order passed by the High Court is modified to that extent. It needs to be stated that when an application for regular bail is moved, the learned trial Judge shall be free to deal with the matter as per law without being influenced by the factum that there had been an order of cancellation of bail. We have said so as we have set aside the order admitting the appellant to bail as it is illegal and unjustified being solely based on the observation made by the High Court in its order passed in M.Cr.C. No. 701 of 2013. We may further add that proper opportunity shall be afforded to the Public Prosecutor to put forth his stand and stance at the time of consideration of the application preferred by the accused for grant of bail.

27. After saying so we would have proceeded to record our formal conclusion. But, something more is required to

be stated. We are absolutely conscious that this Court on earlier occasion in Special Leave Petition (Crl.) No. 2055 of 2013 had clearly stated that the order under challenge merely directed the respondent-accused to surrender and pray for regular bail. The said clarification was made by this Court. Prior to that, the learned trial Judge misconstruing the order had enlarged the accused on bail.

28. This Court in ***Rashmi Rekha Thatoi and another* v. *State of Orissa and others***[5] has dealt with an order of the High Court whereby the learned single Judge, while not granting anticipatory bail to some accused persons, had directed that in case the accused persons surrender and move an application for regular bail, they shall be released on bail on such terms and conditions as may be deemed fit and proper. After referring to the language employed in Section 438 CrPC, the Constitution Bench decision in ***Gurbaksh Singh, Sibbia* v. *State of Punjab*[6],** and the law laid down in

[5] (2012) 5 SCC 690
[6] (1980) 2 SCC 565

***Savitri Agarwal* v. *State of Maharashtra*[7], *Adri Dharan Das* v. *State of West Bengalr*[8], *State of Maharashtra* v. *Mohd. Rashid*[9]** and ***Union of India* v. *Padam Narain Aggarwal*[10]**, this Court has ruled thus: -

"**33.** We have referred to the aforesaid pronouncements to highlight how the Constitution Bench in *Gurbaksh Singh Sibbia* had analysed and explained the intrinsic underlying concepts under Section 438 of the Code, the nature of orders to be passed while conferring the said privilege, the conditions that are imposable and the discretions to be used by the courts. On a reading of the said authoritative pronouncement and the principles that have been culled out in *Savitry Agarwal* there is remotely no indication that the Court of Session or the High Court can pass an order that on surrendering of the accused before the Magistrate he shall be released on bail on such terms and conditions as the learned Magistrate may deem fit and proper or the superior court would impose conditions for grant of bail on such surrender. When the High Court in categorical terms has expressed the view that it is not inclined to grant anticipatory bail to the petitioner-accused it could not have issued such a direction which would tantamount to conferment of benefit by which the accused would be in a position to avoid arrest. It is in clear violation of the language employed in the statutory provision and in flagrant violation of

[7] (2009) 8 SCC 325
[8] (2005) 4 SCC 303
[9] (2005) 7 SCC 56
[10] (2008) 13 SCC 305

the dictum laid down in *Gurbaksh Singh Sibbia* and the principles culled out in *Savitri Agarwal*."

In the said case it has also been observed thus: -

"... it is to be borne in mind that a court of law has to act within the statutory command and not deviate from it. It is a well-settled proposition of law what cannot be done directly, cannot be done indirectly. While exercising a statutory power a court is bound to act within the four corners thereof. The statutory exercise of power stands on a different footing than exercise of power of judicial review. This has been so stated in *Bay Berry Apartments (P) Ltd.* v. *Shobha*[11] and *U.P. State Brassware Corpn. Ltd.* v. *Uday Narain Pandey*[12]."

29. In the case at hand, though such an order was not passed by the learned single Judge, yet the order passed by him was potent enough to create enormous confusion. And it has so happened. It is the duty of the superior courts to follow the command of the statutory provisions and be guided by the precedents and issue directions which are permissible in law. We are of the convinced opinion that the observations made by the learned single Judge while dealing with second application under Section 438 CrPC was not at all

[11] (2006) 13 SCC 737
[12] (2006) 1 SCC 479

warranted under any circumstance as it was neither in consonance with the language employed in Section 438 CrPC nor in accord with the established principles of law relating to grant of anticipatory bail. We may reiterate that the said order has been interpreted by this Court as an order only issuing a direction to the accused to surrender, but as we find, it has really created colossal dilemma in the mind of the learned Additional Sessions Judge. We are pained to say that passing of these kind of orders has become quite frequent and the sagacious saying, "A stitch in time saves nine" may be an apposite reminder now. We painfully part with the case by saying so.

30. The appeal is disposed of in terms of the modification in the order passed by the learned single Judge in M.Cr.C. No. 701 of 2013 and the observations made hereinabove.

.....J.
[Anil R. Dave]

.....J.
[Dipak Misra]

New Delhi;
September 27, 2013.