

2021 SCEJ 1392

SUPREME COURT OF INDIA

(From : Madhya Pradesh)

*DR. DHANANJAYA Y. CHANDRACHUD, J. B. V. NAGARATHNA, J.***Prashant Singh Rajput v. State of Madhya Pradesh and Anr.**

Criminal Appeal No. 1202 of 2021 (Arising out of SLP (Crl) No. 5786 of 2021) with Cri. A. No. 1203 of 2021 (Arising out of SLP (Crl) No. 5788 of 2021),

08.10.2021

CrPC, 1974 (2 of 1974), S.438 - Cancellation of bail - Penal Code (45 of 1860), S.302, S.323, S.34 - Anticipatory bail - Allegations of causing death of deceased by firing - Appellant's case supported by the FIR, his statements under Sections 161 and 164 of the CrPC- Statements of the other two eye-witnesses recoded under Section 164 of the CrPC - Investigating officer's first report indicated that there was a prima facie case against the accused - Supplementary challan indicates that more material had emerged during the course of investigation as against the events portrayed in the FIR registered - Case portrayed by the appellant could not have been ignored by solely relying on the counter-FIR - High Court did not address clear deficiencies in course of investigation was highlighted in order of JMFC and trial Court's order - The offence is of a serious nature of murder - The FIR and the statements under Sections 161 and 164 of the CrPC indicate a specific role to JS and SS in the crime - The order granting anticipatory bail has ignored material aspects, including the nature and gravity of the offence, and the specific allegations against them - Hence, a sufficient case has been made out for cancelling the anticipatory bail granted by the High Court.

CrPC, 1974 (2 of 1974), S.438 - Cancellation of bail - Order granting anticipatory bail has ignored material aspects, including nature and gravity of offence - Order granting bail, liable to be cancelled.

Held,

Appellant's case supported by the FIR, his statements under Sections 161 and 164 of the CrPC- Statements of the other two eye-witnesses recoded under Section 164 of the CrPC - Investigating officer's first report indicated that there was a prima facie case against the accused - Supplementary challan indicates that more material had emerged during the course of investigation as against the events portrayed in the FIR registered - Case portrayed by the appellant could not have been ignored by solely relying on the counter-FIR - High court relied upon the report submitted under Section 173 of the CrPC to hold that accused were not present when the incident occurred - High Court has not addressed the clear deficiencies in the course of the investigation which have been highlighted in the order of the JMFC - Inter alia: (i) the failure to notice eye- witness statements; (ii) reliance on CCTV footage for the period of time after incident had occurred, ignoring prior or contemporaneous footage; (iii) not collecting CCTV footage between Jabalpur and the scene of offence; (iv) relying on CDRs without determining if Jogendra Singh and Suryabhan Singh had actually used the number; and (v) not conducting any finger print analysis - JMFC identified these deficiencies with the investigation and directed further investigation - Upon the submission of the supplementary challan, the JMFC noted that the challan was only in

relation to Ujiyar Singh and Chandrabhan Singh, and did not address the role of Jogendra Singh and Suryabhan Singh – The obvious deficiencies in the investigation have pointed out the errors in the trial Court’s order dated 24 March 2021 rejecting Jogendra Singh and Suryabhan Singh’s applications for anticipatory bail – The Single Judge has, however, overlooked these crucial aspects – It has also been argued on behalf of Suryabhan Singh that while the appellant’s statement under Section 164 of the CrPC is that Suryabhan Singh also shot at the appellant, the FIR and his statement under Section 161 of the CrPC only record that he hit him with the butt of the gun – The trial is yet to take place where the evidence adduced by the prosecution will be appreciated, and the veracity of appellant’s claim in his statement under Section 164 can be determined there – However, at the present stage, the FIR and both the appellant’s statements under Section 161 and 164 are consistent in as much as that Suryabhan Singh did hit him in his head with the butt of the gun – The Court has to determine whether on the basis of the material available at this stage, the High Court has applied the correct principles in allowing the applications for anticipatory bail – The offence is of a serious nature in which Vikas Singh was murdered – The FIR and the statements under Sections 161 and 164 of the CrPC indicate a specific role to Jogendra Singh and Suryabhan Singh in the crime – The order granting anticipatory bail has ignored material aspects, including the nature and gravity of the offence, and the specific allegations against Jogendra Singh and Suryabhan Singh – Hence, a sufficient case has been made out for cancelling the anticipatory bail granted by the High Court.

MCRC No. 31835 of 2021, D/- 01-07-2021 (MP), Reversed.

[Paras 27, 28, 29, 30, 31]

Uday Gupta, S K Gangele , R C Mishra, Senior Counsel, Abhinav Srivastava, for Appearing Parties.

**MCRC No. 31835 of 2021, D/- 01-07-2021 (MP).*

Judgement

1. **Dr. DHANANJAYA Y. CHANDRACHUD, J. :-**

Index

A. The Appeal.

B. Facts.

C. Submissions.

D. Analysis.

E. Conclusion.

A. The appeal

These appeals arise from judgments dated 1 July 2021 (SLP (Criminal) No 5786 of 2021 (the “lead appeal”)), 31 May 2021 (SLP (Criminal) No 5788 of 2021 (the “companion appeal”)) of a Single Judge of the Jabalpur Bench of the High Court for the State of Madhya Pradesh through which it allowed the applications for anticipatory bail filed by the second respondents in both the appeals under Section 438 of the Code of Criminal Procedure 1973 (“CrPC”) in connection with a crime (Crime No 329 of 2020) registered at the Police Station Majholi, District Jabalpur, State of Madhya Pradesh for the offences punishable under Sections 302 and 323 read with Section 34 of the Indian Penal Code 1860 (“IPC”).

2. The crime was registered on the basis of a dehati nalsi/FIR lodged by the appellant on

29 September 2020. The allegation in the FIR is that the appellant was at Negai Tiraha with the deceased, Vikas Singh (who was his brother in-law) and two other individuals (Rajkishore Rajput and Dharmender Patel). It was alleged that the four accused persons, namely Ujiyar Singh, his two sons Chandrabhan Singh and Suryabhan Singh (the second respondent in the companion appeal) and his driver Jogendra Singh (the second respondent in the lead appeal) arrived in a jeep. Thereafter, allegedly due to a previous rivalry, Ujiyar Singh and Chandrabhan Singh shot at Vikas Singh, while Jogendra Singh held him, leading to his death while Suryabhan Singh hit the appellant on his head with the butt of his gun, leading to an injury. Upon being brought to a hospital, Vikas Singh was pronounced dead, following which the appellant got the FIR registered.

3. Suryabhan Singh and Jogendra Singh filed applications seeking anticipatory bail under Section 438 of the CrPC, apprehending their arrest in relation to the crime. While allowing the application for anticipatory bail of Jogendra Singh, the High Court noted that according to the report submitted by the investigating officer under Section 173 of the CrPC, the investigation did not reveal that he was even present at the spot of crime. The High Court observed that the veracity of such a report could not be questioned at this stage. Further, it held that even if he was present at the spot, there was no allegation against him of having fired at the deceased-Vikas Singh or having provoked Ujiyar Singh/Chandrabhan Singh to fire at the deceased-Vikas Singh. Hence, the High Court passed the following order allowing his application for anticipatory bail:

“So, looking to the facts and circumstances of the case, the application is allowed and it is directed that if the applicant surrenders himself before concerned court within fifteen days from today, he shall be released on anticipatory bail on furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one surety in like amount to the satisfaction of the concerned Court for his regular appearance before the Court during trial.

This order will remain operative subject to compliance of the following conditions by the applicant:-

- 1. The applicant will comply with all the terms and conditions of the bond executed by him;*
- 2. The applicant will cooperate in the investigation/trial, as the case may be;*
- 3. The applicant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police Officer, as the case may be;*
- 4. The applicant shall not commit an offence similar to the offence of which he is accused;*
- 5. The applicant will not seek unnecessary adjournments during the trial; and*
- 6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be.”*

Similarly, while considering the application filed by Suryabhan Singh, the High Court observed that the report of the investigating officer under Section 173 of the CrPC indicated that he was not present at the spot of the incident, but was in Jabalpur on the basis of the statements of witnesses, tower location of mobile numbers of the accused persons and the CCTV footage. The High Court held that the ‘only’ allegation against Suryabhan Singh was that he attacked the appellant, but that it only resulted in a simple injury. Hence, the High Court allowed his application for anticipatory bail, observing:

“8... So, looking to the facts and circumstances of the case, the application is allowed and it is directed that if the applicant surrenders himself before concerned court within fifteen days from today, he shall be released on anticipatory bail on furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one surety in like amount to the satisfaction of the concerned Court for his regular appearance before the Court during trial.

9. This order will remain operative subject to compliance of the following conditions by the applicant:-

1. The applicant will comply with all the terms and conditions of the bond executed by him;

2. The applicant will cooperate in the investigation/trial, as the case may be;

3. The applicant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police Officer, as the case may be;

4. The applicant shall not commit an offence similar to the offence of which he is accused;

5. The applicant will not seek unnecessary adjournments during the trial; and

6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be.”

B. Facts

4. The genesis of this dispute between the deceased-Vikas Singh and the accused persons allegedly originated from complaints dated 23 February 2019 and 27 July 2020 which the deceased-Vikas Singh had filed against the accused persons. In his complaint dated 23 February 2019 against Ujiyar Singh and Suryabhan Singh, he had alleged that the accused persons had been threatening him and his workers who were engaged in farming activities, allegedly since they did not belong to the area and had leased the land. He alleged that they had followed him in their vehicle and had also gotten false complaints registered against him. Further, he alleged that they were threatening him because they were engaged in the business of illegal mining of sand from the nearby river and used to pass over the land on which he was cultivating presently while transporting sand (which he had stopped them from doing since he started farming). He also alleged that he, and other residents of the village, had registered complaints against them previously but no action had been taken by the police.

5. Thereafter, in his complaint dated 27 July 2020 against Jogendra Singh, Vikas Singh alleged that he had caught Jogendra Singh stealing the illegally excavated sand which the police had seized from him earlier, following which Jogendra Singh threatened his life. On the basis of his complaint, a crime had been registered at the Police Station Panagar, District Jabalpur, State of Madhya Pradesh against Jogendra Singh under Section 379 of the IPC on 28 July 2020. Deceased- Vikas Singh had also lodged another written complaint on 4 August 2020 where he alleged that the he apprehended that his life was at risk at the hands of the Jogendra Singh and his brother, who had been threatening him since the crime had been registered based on his complaint.

6. Crime No 720 of 2020.

6. On the other hand, according to Jogendra Singh and Suryabhan Singh, the complaints made by Vikas Singh were in fact counter-blasts filed in response to a complaint dated 30

January 2019 filed by Ujiyar Singh against him. In his complaint, Ujiyar Singh had alleged that in fact it was the deceased-Vikas Singh who headed the sand mafia and it was he who complained against the deceased-Vikas Singh. Further, they also argue that the family of the deceased-Vikas Singh has criminal antecedents since: (i) the father of the deceased-Vikas Singh, after being convicted under Section 8 read with Section 20(b)(ii)(C) of the Narcotics Drugs and Psychotropic Substances Act 1985 and Section 25(1)(1B)(a) of the Arms Act 1959, has been undergoing rigorous imprisonment for 20 years and 3 years respectively; and (ii) the grandfather of the deceased was arraigned as one of the accused in a case of murder with robbery.

7. In relation to the present case, according to the information provided under Section 154 of the CrPC by the appellant, at around 12:45 pm on 29 September 2020, the deceased-Vikas Singh along with the appellant and two other individuals were near the Negai Tiraha. The accused persons allegedly arrived in a jeep, which was being driven by Jogendra Singh. Once they parked the jeep, Ujiyar Singh allegedly sat in a chair while his sons (Chandrabhan Singh and Suryabhan Singh) stood near him. Allegedly, due to their pre-existing enmity, Ujiyar Singh shot Vikas Singh in his abdomen. When Vikas Singh tried to run, he was held by Jogendra Singh. Chandrabhan Singh then took the gun from Ujiyar Singh and is alleged to have shot Vikas Singh in the head, while Suryabhan Singh attacked the appellant on his head with the butt of the gun. Thereafter, the four accused persons are alleged to have left in their jeep while the appellant and the other two individuals took Vikas Singh to a hospital, where he was pronounced dead. The statement of the appellant under Section 161 of the CrPC was recorded by the police on 30 September 2020. Later, the statements of the appellant and the other alleged eye-witnesses under Section 164 of the CrPC were recorded on 16 October 2020.

8. In relation to this same incident, Ujiyar Singh also got a crime (Crime No 331 of 2020) registered at the Police Station Majholi, District Jabalpur, State of Madhya Pradesh against the deceased-Vikas Singh and the appellant on 30 September 2020 under Sections 294, 506, 323, 324 and 34 of the IPC. In the cross-FIR, he alleged that the crime took place between 12.45 pm to 1 pm on 29 September 2020. He alleged that he was being driven by his driver Babloo when he came across the deceased-Vikas Singh and the appellant near Negai Tiraha. There, the deceased-Vikas Singh allegedly started recording a video, told him he belonged to the sand mafia and started abusing him. When he allegedly asked him to stop, the appellant is alleged to have assaulted him with a lathi on the left side of his head above the ear which started bleeding, while the deceased-Vikas Singh starting assaulting him with kicks and punches. He alleges that this is when he fired his registered firearm - a 0.22 rifle - at Vikas Singh, which hit him in his stomach and head. The appellant allegedly then hit his hand with the lathi, due to which the butt and barrel of the gun broke apart and blood started oozing from his left hand. Allegedly, he then managed to run away from the spot with his driver Babloo.

9. During the investigation of the present incident, Jogendra Singh had filed an application for anticipatory bail in the crime registered against him under Section 379 of the IPC for stealing sand. By its order dated 8 October 2020, the High Court rejected the application, while noting that the objector (deceased-Vikas Singh) in the application had been murdered, in which Jogendra Singh was one of the individuals who had been named as an accused in the FIR. The High Court had held:

“This case has transcended and gone beyond a simple case for anticipatory bail in a case of theft of sand. Subsequently, during the pendency of this application the objector has been murdered in which the applicant herein has been named as an accused and there are eyewitness testimony which speak about his presence at the scene of occurrence and also

his participation in pulling back the deceased when the deceased tried to run away and saved his life.

Be that as it may, this court refrains from passing any observations on the merits of Crime No. 329/2020 as the same is not before this court. But at the same time, this court cannot close its eyes to the fact that the objector in this case has been murdered and the case has taken a far more serious turn and is no more merely restricted to a case of theft of sand.

Under the circumstances, this may be a case that would require custodia I interrogation as far as Crime No.720/2020 is concerned and, therefore, the application is dismissed.”

Thereafter, Jogendra Singh withdrew his application altogether, seeking to move an application for regular bail under Section 439 of the CrPC, which was recorded by the High Court in its final order dated 7 January 2021.

10. In the final report submitted on 15 December 2020 under Section 173 of the CrPC, Ujiyar Singh and Chandrabhan Singh were named as accused, but Jogendra Singh and Suryabhan Singh were stated to have had no role in the death of Vikas Singh since they were in Jabalpur, 40 km away from the spot where the incident occurred. The report is stated to have been based on: (i) Call Data Records (CDRs) , Tower Mapping and Public Switched Telephone Network (“PSTN”) data from Jogendra Singh and Suryabhan Singh’s mobile phones; (ii) CCTV footage; and (iii) statements of independent witnesses confirming their presence in Jabalpur.

11. The appellant and other family members of the deceased-Vikas Singh filed a protest petition. By an order dated 13 January 2021, the Judicial Magistrate First Class, Siroha(“JMFC”) directed a further investigation, for the following reasons: (i) the investigating officer’s report focused more on the CCTV footage and witness statements proving Jogendra Singh and Suryabhan Singh’s presence in Jabalpur, rather than the witness statements of the appellant and other eye-witnesses who noted their presence at the spot where the crime occurred; (ii) the CCTV footage obtained by the police of the scene of crime was from 1.00 pm to 5.00 pm, while the appellant’s FIR and even Ujiyar Singh’s FIR place the time of the incident between 12 noon and 1 pm and 12.45 pm and 1.00 pm respectively; (iii) the police had not checked the CCTV footage of the roads between the place where the incident took place and Jabalpur; (iv) there were inconsistencies between the statement of Ujiyar Singh and his FIR; (v) Jogendra Singh’s fingerprints had not been obtained from the jeep (which he was alleged to be driving); and (vi) Suryabhan Singh’s finger prints had not been lifted from Ujiyar Singh’s gun.

12. The investigating officer then filed a supplementary challan on 8 March 2021 indicating that on the basis of the further investigation directed by the JMFC, evidence had emerged showing the involvement of Ujiyar Singh and Chandrabhan Singh in the death of Vikas Singh. Hence, in the order dated 10 March 2021, the JMFC observed that the investigating officer had conducted an investigation only against Ujiyar Singh and Chandrabhan Singh, and had not properly considered the accusations against Suryabhan Singh and Jogendra Singh. Both of them were thus summoned.

13. Jogendra Singh and Suryabhan Singh then filed applications for anticipatory bail (Bail Application No 89 of 2021 and Bail Application No 88 of 2021).. By separate orders dated 24 March 2021, the trial Court rejected their applications while noting that: (i) the earlier order dated 13 January 2021 of the JMFC had adverted to the omissions of the investigating officer; (ii) the investigating officer relied upon CDRs but did not ascertain if Jogendra Singh and Suryabhan Singh even used those numbers or whether they were just registered in

their name; and (iii) the witness statements under Sections 161 and 164 of the CrPC assign them a specific role, which cannot be overlooked only because of a prior enmity between the deceased-Vikas Singh and the accused persons.

14. Jogendra Singh and Suryabhan Singh then moved the High Court in applications (MCRC No 31835 of 2021 and MCRC No 18604 of 2021) for anticipatory bail. The High Court allowed the applications on 1 July 2021 and 31 May 2021 respectively. The orders of the High Court are in question before this Court.

C. Submissions

15. Assailing the judgment of the Single Judge of the High Court, Mr Uday Gupta, learned Counsel appearing on behalf of the appellant has urged the following submissions:

(i) The Single Judge relied exclusively upon the report of the investigating officer to hold that Jogendra Singh and Suryabhan Singh could not have been present at the spot where the incident occurred and that the veracity of the report could not be called into question at this stage;

(ii) The Single Judge ignored the observations in the order of the JMFC dated 13 January 2021 and in the subsequent order of the trial Court dated 24 March 2021, which indicate that the investigation conducted by the investigating officer ignored vital circumstances pertaining to the crime;

(iii) The Single Judge ignored the FIR and the statements of the appellant and the other eye-witnesses according to which Jogendra Singh and Suryabhan Singh were present at the spot since the four accused had come together in a jeep, and each had specific role in the crime: (a) Jogendra Singh was driving the jeep and then held Vikas Singh while he was trying to escape after Ujiyar Singh had shot him in the abdomen, following which Chandrabhan Singh shot him in the head; and (b) Suryabhan Singh assaulted the appellant with the butt of the rifle;

(iv) That another Single Judge of the High Court rejected the application for anticipatory bail filed by Jogendra Singh even in the case registered against him for illegal sand mining on the complaint filed by the deceased- Vikas Singh, due to the nature of allegations against him in the present case; and

(v) The Single Judge has ignored the seriousness and gravity of the crime as well as material aspects and hence, this Court should cancel the anticipatory bail granted, in accordance with the principles laid down by this Court in *Mahipal v. Rajesh Kumar* (. (2020) 2 SCC 118 : (AIR 2020 SC 670), para 16) (“Mahipal”).

16. Mr S K Gangele, learned Counsel appearing on behalf of Jogendra Singh urged that:

(i) The report filed by the investigating officer shows that Jogendra Singh was not present at the spot where the incident occurred, but was in Jabalpur;

(ii) The FIR registered at the behest of Ujiyar Singh provides an alternate explanation of the events leading to the death of Vikas Singh, according to which Ujiyar Singh fired at the deceased since he and the appellant were threatening his life; and

(iii) Ujiyar Singh’s FIR notes that his rifle was broken by the appellant and he was also injured by a lathi on his head and hand, both of which injuries have not been explained.

17. Mr R C Mishra, learned Senior Counsel appeared on behalf of Suryabhan Singh, urged:

(i) The FIR has been registered due to enmity between his family and the deceased-Vikas

Singh who used to run a sand mafia against which his father, accused Ujiyar Singh, had complained. The deceased-Vikas Singh also had criminal antecedents;

(ii) The allegation that the appellant suffered an injury on his head due to Suryabhan Singh assaulting him with the butt of the rifle is inconsistent with the nature of the injury, which is an abrasion; and

(iii) The FIR and the appellant's statement under Section 161 of the CrPC do not make any allegation of Suryabhan Singh having fired at the appellant prior to hitting him with a gun, while his statement under Section 164 of the CrPC makes that claim for the first time. No such empty cartridge has been found and only the bullets in body of the deceased-Vikas Singh have been recovered.

18. Mr Abhinav Srivastava, learned Counsel has appeared on behalf of the State of Madhya Pradesh, urged that the order granting anticipatory bail is unsustainable since:

(i) The crime is of a serious nature; and

(ii) As noted in JMFC's order dated 13 January 2021, while Ujiyar Singh and Chandrabhan Singh had been arrested and kept in judicial custody, Jogendra Singh and Suryabhan Singh continued to abscond.

19. The rival submissions now fall for our consideration.

D. Analysis

20. The FIR attributes specific roles to both Jogendra Singh and Suryabhan Singh in the commission of the crime. The statement of the appellant under Section 161 of the CrPC adverts to the following: (i) that Ujiyar Singh would take sand illegally mined through the land on which he was cultivating along with the deceased-Vikas Singh; (ii) when they told Ujiyar Singh to desist, he took offence and filed false complaints against the deceased-Vikas Singh; (iii) on 29 September 2020, the deceased-Vikas Singh and the appellant went to Negai Tiraha in the vehicle of the deceased-Vikas Singh and reached there at about 1.00 pm, where they met the two others (Rajkishore Rajput and Dharmendra Patel); (iv) the four accused persons (Ujiyar Singh, Chandrabhan Singh, Suryabhan Singh and Jogendra Singh) arrived in a jeep being driven by Jogendra Singh; (v) Vikas Singh received a call and started moving towards Negai Road when Ujiyar Singh shot him in the abdomen; (vi) when Vikas Singh tried to flee, Jogendra Singh caught hold of him while Chandrabhan Singh took the gun from Ujiyar Singh and shot him in the head; (vii) Suryabhan Singh took the gun from Chandrabhan Singh and assaulted the appellant on the head using the butt of the gun; (viii) one Nilesh Gotia came around in his car and saw them, following which the appellant and the other two individuals took Vikas Singh to a hospital in Nilesh's car, from where they transferred him to the medical college in an ambulance, where he was pronounced dead; and (ix) the police arrived at the medical college, following which the appellant registered his complaint.

21. The material at this stage cannot be examined with a fine toothcomb in the manner of a criminal trial. What needs to be determined is whether the parameters for the grant of anticipatory bail were correctly formulated and applied by the Single Judge. The line of submission of the counsel for the accused persons dwells on some variance between the statements of the appellant under Section 161 and Section 164 of the CrPC, namely: (i) that the appellant and the deceased reached the Negai Tiraha around 12.15 pm, and not 1.00 pm; and (ii) after Vikas Singh was shot in the head by Chandrabhan Singh, Suryabhan Singh first shot at the appellant but the shot went above his head. Thereafter, Suryabhan Singh hit him in the head with the butt of the gun, following which the handle of the rifle broke

and fell there.

22. The statement of Rajkishore Rajput, an eye-witness, under Section 164 of the CrPC mentions that: (i) on 29 September 2020, the deceased-Vikas Singh came to his house at 9 am and told him to meet him at Negai Tiraha; (ii) he reached Negai Tiraha with Dharmender Patel at 12 noon, following which the deceased-Vikas Singh arrived in his vehicle with the appellant; and (iii) after committing the murder of the Vikas Singh, the four accused left in their jeep.

23. The statement of Dharmender Patel, another eye-witness, under Section 164 of the CrPC, mentions that when he reached Negai Tiraha, he saw Rajkishore Rajput who informed him that the deceased-Vikas Singh was about to arrive. Other than that, his statement accords with those of the appellant and Rajkishore Rajput under Section 164.

D.1 Cancellation of Anticipatory Bail

24. In a recent judgment of a two Judge Bench of this Court in Mahipal (supra), this Court noted the difference in the approach that this Court must adopt while considering a challenge to an order which has granted bail and an application for cancelling the bail granted. The Court held:

“16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527 : (2015 AIR SCW 441)] , the accused was granted bail by the High Court [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031 : (AIROnline 2014 All 3)] . In an appeal against the order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031 : (AIROnline 2014 All 3)] of the High Court, a two- Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. (as the learned Chief Justice then was) held: (Neeru Yadav case [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527 : (2015 AIR SCW 441)] , SCC p. 513, para 12)

“12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a PART D case of the second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary

for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment..."

(emphasis supplied)

25. In another decision in *Dr. Naresh Kumar Mangla v. Anita Agarwal and Others*, 2020 SCC OnLine SC 1031 : (AIR 2021 SC 277), a three Judge Bench of this Court cancelled the anticipatory bail granted to the accused, following the unnatural death of his wife. The Court surveyed the authorities on the grant of anticipatory bail and held:

"19. In the recent decision of the Constitution Bench in Sushila Aggarwal v. State (NCT of Delhi) [(2020) 5 SCC 1 : (AIR 2020 SC 831)], the considerations which ought to weigh with the Court in deciding an application for the grant of anticipatory bail have been reiterated. The final conclusions of the Court indicate that:

"...92.3...While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."

20. The Constitution Bench has reiterated that the correctness of an order granting bail is subject to assessment by an appellate or superior court and it may be set aside on the ground that the Court granting bail did not consider material facts or crucial circumstances...

[...]

22. It is apposite to mention here the distinction between the considerations which guide the grant of anticipatory bail and regular bail. In Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : (AIR 1985 SC 969)], while setting aside an order granting anticipatory bail, this Court observed:

"...Says the learned Chief Justice that in regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. It was observed that "it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond". Some of the relevant considerations which govern the discretion, noticed therein are "the nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and 'the larger interests of the public or the State', are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail". A caution was voiced that "in the evaluation of the consideration whether the applicant is likely to abscond, there can be no presumption that

the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it.””

26. Let us now consider these principles in the context of the facts of the present case. Both the sides have presented their point-of-view in relation to the enmity which existed between the deceased-Vikas Singh and the family of Ujiyar Singh. However, we are not required to adjudicate on whether it was the deceased-Vikas Singh or Ujiyar Singh who was mining sand illegally; rather, it is sufficient to note that previous enmity did exist between both, whoever be the instigator.

27. In relation to the present incident, the appellant’s case is supported by the FIR, his statements under Sections 161 and 164 of the CrPC, and the statements of the other two eye-witnesses under Section 164 of the CrPC. On the other hand, Jogendra Singh and Suryabhan Singh rely on the counter FIR filed by Ujiyar Singh according to which they were not present at the scene of crime and Ujiyar Singh shot the deceased-Vikas Singh in self-defense. The orders of the JMFC dated 13 January 2021 and 10 March 2021 advert to the contents of the FIR registered at the behest of the appellant. The investigating officer’s first report dated 15 December 2020 indicated that there was a prima facie case against Ujiyar Singh and Chandrabhan Singh. The supplementary challan dated 8 March 2021 indicates that more material had emerged during the course of investigation as against the events portrayed in the FIR registered at the behest of Ujiyar Singh. Hence, the case portrayed by the appellant could not have been ignored by solely relying on the counter-FIR.

28. The High Court has placed reliance upon the report submitted under Section 173 of the CrPC on 15 December 2020 to hold that Jogendra Singh and Suryabhan Singh were not present when the incident occurred. However, the High Court has not addressed the clear deficiencies in the course of the investigation which have been highlighted in the order of the JMFC dated 13 February 2021 and the trial Court’s order dated 24 March 2021. These are, inter alia: (i) the failure to notice eye-witness statements; (ii) reliance on CCTV footage for the period of time after incident had occurred, ignoring prior or contemporaneous footage; (iii) not collecting CCTV footage between Jabalpur and the scene of offence; (iv) relying on CDRs without determining if Jogendra Singh and Suryabhan Singh had actually used the number; and (v) not conducting any finger print analysis. In the order dated 13 February 2021, the JMFC identified these deficiencies with the investigation and directed further investigation. Upon the submission of the supplementary challan, the JMFC noted in their order dated 10 March 2021 that the challan was only in relation to Ujiyar Singh and Chandrabhan Singh, and did not address the role of Jogendra Singh and Suryabhan Singh. The obvious deficiencies in the investigation have pointed out the errors in the trial Court’s order dated 24 March 2021 rejecting Jogendra Singh and Suryabhan Singh’s applications for anticipatory bail. The Single Judge has, however, overlooked these crucial aspects.

29. Finally, it has also been argued on behalf of Suryabhan Singh that while the appellant’s statement under Section 164 of the CrPC is that Suryabhan Singh also shot at the appellant, the FIR and his statement under Section 161 of the CrPC only record that he hit him with the butt of the gun. The trial is yet to take place where the evidence adduced by the prosecution will be appreciated, and the veracity of appellant’s claim in his statement under Section 164 can be determined there. However, at the present stage, the FIR and both the appellant’s statements under Section 161 and 164 are consistent in as much as that Suryabhan Singh did hit him in his head with the butt of the gun. An argument has also been raised in relation to the nature of the injury caused to the appellant, but this has to be decided at the stage of trial after evidence has been led.

30. The Court has to determine whether on the basis of the material available at this stage, the High Court has applied the correct principles in allowing the applications for anticipatory bail. The offence is of a serious nature in which Vikas Singh was murdered. The FIR and the statements under Sections 161 and 164 of the CrPC indicate a specific role to Jogendra Singh and Suryabhan Singh in the crime. The order granting anticipatory bail has ignored material aspects, including the nature and gravity of the offence, and the specific allegations against Jogendra Singh and Suryabhan Singh. Hence, a sufficient case has been made out for cancelling the anticipatory bail granted by the High Court.

E. Conclusion

31. Therefore, the appeals are allowed. The impugned judgments dated 1 July 2021 and 31 May 2021 of the Single Judge of the High Court of Madhya Pradesh granting anticipatory bail to Jogendra Singh and Suryabhan Singh - the second respondents in these appeals - are set aside.

32. Pending applications, if any, also stand disposed of.

Appeal Allowed.