

ANIL KUMAR TULSIYANI
v.
STATE OF U.P. AND ANR.

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MAY 5, 2006

[H.K. SEMA AND R.V. RAVEENDRAN, JJ.]

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Bail—Grant of—Propriety—Non-bailable offence—Accused an influential person—Grant of bail by High Court—Held: Grant of bail was not justified—The same was granted without considering the gravity and nature of the offence—Code of Criminal Procedure, 1973—S. 439—Penal Code, 1860—s.302 r/w s.201

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The respondent-accused was charged under S.302 r/w s.201 IPC. His wife was co-accused. Respondent was an Advocate. His bail application was rejected by Sessions Court. However, it was later granted by the High Court. Hence the present appeal. Respondent-accused *inter alia* contended that the petition out of which the present appeal arose, was not maintainable as the same was not filed by the aggrieved party.

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Allowing the appeal, the Court

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HELD: 1. It cannot be said that the petition itself is not maintainable, as the same is not filed by an aggrieved party as permission to file Special Leave Petition has already been granted. [924-G-H]

2.1. The circumstances to be considered in an application for bail are (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; (ii) severity of the punishment in the event of conviction; (iii) danger of the accused absconding or fleeing, if released on bail; (iv) character, behaviour, means, position and standing of the accused; (v) likelihood of the offence being repeated; (vi) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail. [926-B-C]

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2.2. One of the considerations in granting bail in non-bailable offences is the gravity and the nature of the offence. There are no

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A mitigating circumstances, which warranted the High Court in granting bail in a non-bailable grave offence under Section 302/201 IPC. The High Court has not at all considered the gravity and the nature of the offence in which the deceased stated to be a close friend of the respondent-accused has been shot at in his house, that too inside his bedroom. *Prima facie*, the prosecution story has disclosed that a heavy burden is laid on the accused to explain the circumstances. [925-D-F]

State of U.P. v. Amarmani Tripathi, [2005] 8 SCC 21, relied on.

C 2.3. In the present case, the respondent being an Advocate, is in a commanding position and standing in the society. Keeping in view his position in the background, a reasonable apprehension of the witnesses being tampered with or won over, coerced, threatened or intimidated by using his influence and position cannot be ruled out. [926-D]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 529 of 2006.

From the Judgment and Order dated 7.9.2005 of the Allahabad High Court in Criminal Misc. Bail Application No. 11884/2005.

E Ranjit Kumar, Siddharth Dave and Vibha Datta Makhija for the Appellant.

Vijay Hansaria, C.D. Singh, Prashant Chaudhary, Abhishek Chaudhary and Praveen Swarup for the Respondents.

F The Judgment of the Court was delivered by

H.K. SEMA, J. Leave granted.

The challenge in this appeal is to the order dated 7.9.2005 passed by the High Court of judicature at Allahabad in Criminal Misc. Bail Application No.11884 of 2005 granting bail to the second respondent-accused.

G We may at this stage, dispose of one of the arguments of Mr. Vijay Hansaria, learned senior counsel, for the second respondent-accused that the petition itself is not maintainable, as the same is not filed by an aggrieved party. This contention does not survive as by our order dated 30.9.2005 permission to file Special Leave Petition has already been granted.

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Learned senior counsel on both sides have advanced arguments touching the merits of the case. We, however, refrain ourselves from making any observation on the merits of the case at this stage lest it may prejudice the case of the accused, as the trial is yet to commence. Suffice it is to say the High Court was not justified in admitting bail to the respondent. A

The offence under which the respondent was charged is Section 302 read with 201 IPC in which the husband was the main accused and the wife was the co-accused. B

Co-accused's application was rejected by the High Court on 3.6.2005 after a threadbare discussion. The High Court arrived at a finding that the incident had taken place inside the house of the accused, that too in her bedroom itself and that the accused being an Advocate would be no mitigating ground to release her on bail. C

The respondent-husband's application was also rejected by the Sessions Judge, Allahabad by an order dated 10.6.2005 after taking into consideration the submission of both sides and various facts and circumstances of the case. D

The High Court, in our view, seems to have weighed with the tenuous circumstances such as there being no report of ballistic expert to show the alleged fingerprints found on the recovered revolver to be of his own, there being no previous criminal history of the accused who is a practicing advocate of the High Court. The High Court has not at all considered the gravity and the nature of the offence in which the deceased stated to be a close friend of the respondent-accused has been shot at in his house, that too inside his bedroom. *Prima facie*, the prosecution story has disclosed that a heavy burden is laid on the accused to explain the circumstances. E F

Mr. Hansaria, learned senior counsel for the respondent, strenuously contended that the respondent is on bail since 7.9.2005 that he has never misused the liberty granted to him that there is no allegation of prosecution witnesses being tampered with and there is no apprehension of the respondent absconding or thwarting justice. According to him, there is no ground made out for cancellation of bail. He also contended that the principles applicable to cancellation of bail should be applied when considering an appeal under Article 136 of the Constitution against an order granting bail. We are unable to countenance with this submission of learned counsel for the respondent. What we are considering is the correctness of the manner in which the respondent has been admitted to bail by the High Court. We are not considering H G

A any application for cancellation of bail.

By now it is well-settled principle of law that one of the considerations in granting bail in non-bailable offences is the gravity and the nature of the offence. The High Court has not at all addressed to this issue while granting bail to the respondent.

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This court in *State of U.P. v. Amarmani Tripathi*, [2005] 8 SCC 21, in which one of us (Raveendran, J.) was a member has considered various decisions of this Court and observed that the circumstances to be considered in an application for bail are (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being

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thwarted by grant of bail.

In the present case, admittedly, the respondent is an Advocate. Being an advocate he is in a commanding position and standing in the society. Keeping in view his position in the background, a reasonable apprehension of the witnesses being tampered with or won over, coerced, threatened or

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intimidated by using his influence and position cannot be ruled out.

In fact, going through the entire order of the High Court granting bail, we do not find any mitigating circumstances, which warranted the High Court in granting bail in a non-bailable grave offence under Section 302/201 IPC.

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For the reasons aforesaid this appeal deserves to be allowed. The order of the High Court dated 7.9.2005 granting bail to the respondent is hereby quashed and set-aside. The respondent is on bail. His bail bond and surety stands cancelled. He is directed to be taken back into custody forthwith.

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K.K.T.

Appeal allowed.