

Non- Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 152 OF 2020

(arising out of Special Leave Petition (Crl.) No.9207/2019)

Prabhakar TewariAppellant

Versus

State of U.P. & Anr.Respondents

WITH

Criminal Appeal No.153 OF 2020

(arising out of S.L.P.(Crl.)No.9209/2019)

J U D G M E N T

ANIRUDDHA BOSE, J.

Leave granted in both the appeals.

2. These appeals arise out of two orders passed by the High Court on 11th September, 2019 granting bail to two accused persons, Vikram Singh@ Vikki (in SLP(Crl.) No.9207/2019) and Malkhan Singh (in SLP(Crl.) No.9209/2019) arraigned in a criminal case initiated on the basis of a First Information Report dated 7th February 2009. The said report was made by

Prabhakar Tewari, being the appellant (in both the appeals) in Police Station Jagadishpur in the State of Uttar Pradesh.

3. The appellant is the son of the deceased victim, Purushottam Dutt Tiwari. He was assaulted by gunshots on 7th February, 2019 at about 4.00 p.m. while returning to his residence after attending the Court in connection with a case. In the first appeal (i.e. SLP(Crl.)No.9207 of 2019), the appellant assails the order granting bail to Vikram Singh @ Vikky by the High Court. In the statement of the appellant recorded in the evening on the date of occurrence at about 8.40 p.m., five persons have been named as direct assailants. Said Vikram Singh in the First Information Report has been named as the person by whom the “incident has been committed”. In his statement recorded on the next day i.e. 8th February, 2019, the appellant had named Vikram Singh as the person who had conspired to commit the said crime. Vikram Singh was taken into custody on 19th March 2019. The High

Court, while granting bail to the accused Vikram Singh recorded the submission of his learned counsel as also that of the learned A.G.A., who had opposed the prayer for bail, in the following terms:-

“Learned counsel for the applicant submits that accused applicant has falsely been implicated in the present case. It is further submitted that statement of independent witness Narendra Dev Upadhyay was recorded after a span of 52 days and in his statement, he has categorically stated he has overheard the applicant planning for the alleged incident thereby indicating criminal conspiracy on the part of the applicant. There is no incriminating evidence against the applicant on record. It is also submitted that no recovery has been shown against the applicant. The accused applicant is languishing in jail since 19.03.2019. It has been pointed out that the applicant has criminal history which has been duly explained in the rejoinder affidavits. It is further submitted that there is no possibility of the applicant of fleeing away from judicial custody or tampering with the witnesses. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail.

Learned A.G.A. opposed the prayer for bail but could not dispute the aforesaid facts as argued by the learned counsel for the applicant.”

4. Learned counsel for the appellant has submitted that the accused Vikram Singh is involved in at least five other criminal cases under the same Police Station, Jagdishpur. He has also brought to our notice the witness statement of one Narendra Dev Upadhyay. This statement was recorded on 29th March 2019. The part of his statement to which our attention has been drawn by learned counsel for the appellant records that the said witness saw Vikram Singh standing near National Highway 56 Flyover on the date of occurrence of the incident in Warisganj with 6 or 7 accomplices and all of them were talking about plans of killing the victim.

Learned Counsel for the State of Uttar Pradesh supported the appellant's stand. Mr. C.A. Sundram, learned senior counsel for the accused contested the present appeal. His main

argument is that the statement of Narendra Dev Upadhyay, on which reliance was placed by the prosecution and the appellant was recorded after fifty days from the date of occurrence of the incident. On the question of granting bail, Mr. Sundram has argued, such a statement was unreliable. He has also submitted that even as per the F.I.R. or the witness statements recorded under Section 161 of the Code of Criminal Procedure, 1973, his client was not named as having participated in the act of assault or being present at the place of occurrence while the assault took place.

5. We have considered the respective submissions. The facts highlighted by the appellant are that the case involves offence under Section 302 read with Sections 120-B/34, 147, 148 and 149 of the Indian Penal Code, 1860. The accused has several criminal cases pending against him and has been named in the statement forming the basis of the FIR on the date of occurrence itself. Two individuals, Rahul Tiwari and

Narendra Dev Upadhyay, whose statements have been recorded under Section 161 of the 1973 Code also refer to involvement of the accused Vikram Singh.

6. In the case of **Mahipal Vs. Rajesh Kumar @ Polia & Anr.** (Criminal Appeal No.1843 of 2019) decided on 5th December, 2019, a coordinate Bench of this Court has discussed the scope of jurisdiction of the appellate Court in setting aside an order of granting bail. The two key factors for interfering with such an order are non-application of mind on the part of the Court granting bail or the opinion of the Court in granting bail is not borne out from a prima facie view of the evidence on record. In the case of **Maulana Mohammed Amir Rashadi vs. State of Uttar Pradesh and Another** [(2012) 2 SCC 382], a two Judge Bench of this Court declined to interfere with an order of the High Court granting bail to an accused having considered the factual features of that case.

7. On considering the submissions of the learned counsel for the parties. Having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in the case of Mahipal (supra) for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima-facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex-facie error in the order has been shown by the appellant which would

establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail.

This appeal is dismissed.

Criminal Appeal No...../2020

(arising out of SLP(Crl) No.9209/2019)

1. This appeal also has its origin in the same FIR which forms subject matter of SLP(Crl.) No.9207/2019. The submissions on the basis of which the accused arraigned in the same case was granted bail would appear from the following passage of the order of the High Court:-

“Learned counsel for the applicant submits that accused applicant has falsely been implicated in the present case. It is further submitted that the alleged incident took place on 07.02.2019 and statement of independent witness Narendra Dev Upadhyay was recorded after a span of 52 days. It is also submitted that there is no recovery from the applicant, which may lead towards his involvement in the commission of alleged crime. No specific role has been assigned to the applicant. The accused applicant is

languishing in jail since 12.03.2019. It is next submitted that the applicant is neither a previous convict nor he has any criminal history. It is further submitted that there is no possibility of the applicant of fleeing away from judicial custody or tampering with the witnesses. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail.

Learned A.G.A. opposed the prayer for bail but could not dispute the aforesaid fact as argued by the learned counsel for the applicant.”

2. The accused is Malkhan Singh in this appeal. He was named in the FIR by the appellant Prabhakar Tewari as one of the five persons who had intercepted the motorcycle on which the deceased victim was riding, in front of Warisganj Railway Station (Halt) on the highway. All the five accused persons, including Malkhan Singh, as per the F.I.R. and majority of the witness statements, had fired several rounds upon the deceased victim. The statement of Rahul Tewari recorded on 15th March, 2019, Shubham Tewari recorded on 12th April,

2019 and Mahipam Mishra recorded on 20th April 2019 giving description of the offending incident has been relied upon by the appellant. It is also submitted that there are other criminal cases pending against him. Learned counsel for the accused-respondent no.2 has however pointed out the delay in recording the witness statements. The accused has been in custody for about seven months. In this case also, we find no error or impropriety in exercise of discretion by the High Court in granting bail to the accused Malkhan Singh. The reason why we come to this conclusion is broadly the same as in the previous appeal. This appeal is also dismissed and the order of the High Court is affirmed.

.....J.
(Deepak Gupta)

.....J.
(Aniruddha Bose)

New Delhi,
Dated: 24th January, 2020.