

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2024
(Arising out of SLP(Crl.) No.9816/2023)

AJAY KUMAR YADAV ..APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH & ORS. ...RESPONDENT(S)

ORDER

Leave granted.

The appellant before us is the complainant, who reported the death of his brother in police custody on 12th February, 2021. He assails the order granting bail to one of the police constables accused of committing the said offence. The deceased was arrested in connection with a case involving robbery and he was taken into custody on 11th February, 2021. Altogether, 19 police officials have been implicated in the offence and chargesheet has been submitted against them. So far as respondent No.3/appellant is concerned, the chargesheet includes allegations of commission of offences under Section 34 read with Sections 302, 330, 331, 218 and Section 120-B of the Indian Penal Code. The High Court, by its order passed on 15th February, 2023, enlarged respondent No.3 on bail.

Mr. Dave, learned senior counsel,

representing the appellant, questions the legality of the aforementioned order passed by the High Court. The investigation was handed over to the Central Bureau of Investigation 'CBI', and Mrs. Bhati, learned Additional Solicitor General, representing the said agency, also supports the appellant's case.

The ground on which the present appeal is resisted by Mr. Balasubramanian, learned senior counsel, appearing for the respondent No.3, is that his client, being a police constable, was working as a substitute driver, only as a stopgap arrangement, and had no role to play in the alleged commission of the offence on that date. It is primarily on this ground the High Court had enlarged him on bail. We have been taken through the chargesheet and we find that there is a certain role attributed to respondent No.3 therein in the commission of the alleged offences. As per the materials disclosed by the agency, his role was not confined to just being a driver of a police vehicle so far as commission of the alleged offences is concerned. The status report filed before us by the CBI is on the same lines. Of course, these factors would have to be independently assessed at the stage of trial on leading of evidence but we are

considering them only for the purpose of determining the question of bail of respondent No.3.

It is a fact that, in ordinary circumstances, we ought not to invoke our jurisdiction under Article 136 of the Constitution of India to invalidate an order granting bail to an accused. But this criteria, while dealing with the question of granting bail, would not apply in a case of custodial death, where police officials are arraigned as accused. Such alleged offences are of grave and serious nature. The role of the Court in dealing with the plea for bail in offences involving police officials has been explained by this Court in the case of State of Jharkhand -vs- Sandeep Kumar [2024 INSC 179], which was authored by one of us (Sanjay Kumar J.). This was a case in which anticipatory bail was granted to a police official accused of, inter-alia, interpolations in an FIR. It has been held in this decision:-

"9. In the light of these serious allegations made against no less than a senior police officer, an essential cog in the machinery of law enforcement, the High Court ought not to have taken a liberal view in the matter for the mere asking. Considering the position held by the respondent, even if he was suspended from service and the chargesheet had already been filed against him, the possibility of his tampering with the witnesses and the evidence was sufficiently high. That apart,

grant of such relief to a police officer facing allegations of manipulating the investigation so as to favour an accused would send out a wrong signal in society. It would be against public interest.

10. No doubt, none of the provisions under which the respondent is alleged to have committed offences entail imprisonment in excess of seven years and most of them were bailable offences. Ordinarily, an accused facing the prospect of incarceration, if proved guilty of such offences, would be entitled to the relief of pre-arrest bail. However, the same standard would not be applicable when the accused is the Investigating Officer, a police officer charged with the fiduciary duty of carrying forward the investigation to its rightful conclusion so as to punish the guilty. The 6 respondent is alleged to have failed in this fundamental duty as a police officer. This consideration must necessarily weigh in with the nature of the offences and the possible punishment therefor. Presumptions and other considerations applicable to a layperson facing criminal charges may not carry the same weight while dealing with a police officer who is alleged to have abused his office."

The present proceeding relates to an order granting bail in connection with an offence much more serious in nature and, in our opinion, the same principle ought to apply.

So far as the present appeal is concerned, we ought to make an exception from the general approach on the question of granting bail and adopt a stricter approach, primarily on two grounds which are in tandem with the principles applied in the case of Sandeep Kumar (supra):-

(i) The first one is that respondent No.3 is

part of the police force and the allegation is that of custodial death, in which he has been implicated. In cases of this nature, having regard to the overall influence a member of a police force may wield in connection with a case against them pertaining to custodial death, a stricter view is to be taken on the question of granting bail.

(ii) Secondly, the charge is under Section 302 of the Indian Penal Code and the appellant has been enlarged on bail within 1 and ½ years of his detention. The alleged offence is of grave and serious nature and that factor has not been properly considered by the High Court.

Having regard to the contents of the chargesheet, we do not think this was a fit case where he ought to have been enlarged on bail within one and a half years of his initial detention. We, accordingly, set aside the order impugned and direct respondent No.3 to surrender before the CBI Court within a period of four weeks and once respondent No.3 surrenders, he shall be taken into custody by the concerned Court.

We make it clear that our observations, made in the earlier part of the order, purely relate to the question of grant of bail and these observations shall not in any way influence the

trial.

The appeal stands allowed in the above terms.

Pending application(s), if any, shall stand disposed of.

.....J.
[ANIRUDDHA BOSE]

.....J.
[SANJAY KUMAR]

NEW DELHI;
MARCH 12, 2024.

ITEM NO.13

COURT NO.5

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 for Special Leave to Appeal (Crl.) No. 9816/2023

(Arising out of impugned final judgment and order dated 15-02-2023 in CRMB No. 29494/2022 passed by the High Court Of Judicature At Allahabad)

AJAY KUMAR YADAV

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(IA No. 140314/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 140317/2023 - EXEMPTION FROM FILING O.T.)

Date : 12-03-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIRUDDHA BOSE

HON'BLE MR. JUSTICE SANJAY KUMAR

For Petitioner(s) Mr. Siddhartha Dave,, Sr. Adv.
M/S. Lawfic, AOR
Mr. Anuroop Chakravarti, Adv.
Mr. Prastut Mahesh Dalvi, Adv.
Mr. S. Vishnu Sankar, Adv.
Ms. Athira G Nair, Adv.

For Respondent(s) Mr. Shaurya Sahay, AOR
Mr. Shobhit Dwivedi, Adv.
Mr. Satvik Mishra, Adv.

Mrs. Aishwarya Bhati, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Ms. Ruchi Kohli, Adv.
Ms. Archana Pathak Dave, Adv.
Mrs. Chitrangda Rastarawara, Adv.
Mr. Rajan Kumar Chourasia, Adv.
Mr. Parantap Singh, Adv.

Mr. Sachin Sharma, AOR

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

Leave granted.

The appeal is allowed in terms of the signed
order which is placed on the file.

Pending application(s), if any, shall stand
disposed of.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(VIDYA NEGI)
ASSISTANT REGISTRAR