REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 883 OF 2021
(Arising from S.L.P.(Criminal) No.3739/2021)

Harjit Singh …Appellant

Versus

Inderpreet Singh @ Inder and another …Respondents

J U D G M E N T

M.R. SHAH, J.

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 18.03.2021 passed by the High Court of Punjab & Haryana at Chandigarh in CRM-M No. 11809 of 2021, by which the High Court has released respondent no.1 herein – original accused on bail in connection with FIR No. 245 dated 21.09.2020 at Police Station Sadar Jalandhar, District Jalandhar under Sections 302, 120-B, 34, 201 IPC and Section 25 of Arms Act, 1959, the original informant – son of the deceased has preferred the present appeal.

3. That the appellant herein – Harjit Singh son of late Mann Singh lodged an FIR being FIR No. 245 at Police Station Sadar Jalandhar, District Jalandhar on 21.09.2020 against the accused persons including respondent no.1 herein for the offences under Sections 302, 120-B, 34, 201 IPC and Section 25 of Arms Act, 1959 alleging inter alia that on 21.09.2020 at about 5:45 p.m. when his father Mann Singh was present near the gate of Gurudwara Sahib, a white colour Maruti Car stopped near his father from which three persons alighted. The persons alighted from the car were (1) Jaskaran Singh @ Jassa son of Bahadur Singh; (2) Bahadur Singh son of Santokh Singh; and (3) Satvinder Singh son of Karam Singh, residents of Jamsher Khas. It was alleged that Bahadur Singh and Satvinder Singh caught hold of his father and Jaskaran Singh @ Jassa, who was armed with a pistol, fired 4-5 shots at his father, who died on account of said fire arm shots. It was specifically alleged that his father has been murdered by the assailants in connivance with Inderpreet Singh (respondent No.1 herein), who is undergoing sentence on account of a case registered at the instance of the complainant party. It was further alleged that the motive for the said occurrence is that FIR No. 12 dated 30.01.2020 at Police Station Jalandhar under Sections 307, 326, 323, 324, 452, 506, 148 and 149 IPC and FIR No. 33 dated 14.2.2011 at Police Station Jalandhar under Sections 307, 308, 326, 325, 323,324,148, 149 and 427 IPC had been lodged against the

accused and the complainant's father had been pursuing the said cases to get them convicted and on account of which his father had been murdered.

3.1 That during the investigation, it was revealed that though Inderpreet Singh (respondent No.1 herein) was not physically present at the spot, but it has been revealed that the deceased was murdered at the instance of the accused – Inderpreet Singh (respondent no.1 herein) who hatched criminal conspiracy along with other co-accused to kill Mann Singh – father of the complainant; that during the interrogation the accused Inderpreet Singh (respondent no.1 herein) confessed that he was in touch with co-accused through a mobile phone from jail which he destroyed after the occurrence; that during the course of investigation it was revealed that Inderpreet Singh (respondent no.1 herein) and co-accused Jaskaran Singh were convicted in FIR No. 67 dated 08.05.2016; that Inderpreet Singh (respondent no.1 herein) filed appeal in the High Court against his conviction and sentence in FIR No. 67 of 2016 and by order dated 30.04.2019 the High Court suspended the sentence of respondent no.1 herein – Inderpreet Singh, pending his appeal; that the complainant herein filed an application under Section 439 (2) Cr.P.C. before the High Court for cancellation of bail of Inderpreet Singh (respondent no.1 herein) and co-accused Jaskaran Singh @ Jassa since they had been calling the complainant and the

injured on their phones and threatening them and vide order dated 26.07.2019 the High Court was pleased to cancel the bail of Inderpreet Singh (respondent no.1 herein) and co-accused Jaskaran Singh @ Jassa and directed the Chief Judicial Magistrate, Jalandhar to take them into custody; that Inderpreet Singh (respondent No.1 herein) and co-accused Jaskaran Singh @ Jassa challenged the order passed by the High Court cancelling their bail before this Court and this Court dismissed the special leave petition vide order dated 11.09.2019; that thereafter Inderpreet Singh (respondent No.1 herein) surrendered, however co-accused Jaskaran Singh @ Jassa jumped the bail and is absconding since then and he has been declared proclaimed offender.

3.2 That during the investigation it was revealed that taking advantage of the situation, Inderpreet Singh (respondent No.1 herein) while being lodged in Central Jail, Kapurthala hatched conspiracy with co-accused Jaskaran Singh @ Jassa, Bahadur Singh and Satvinder Singh to commit the murder of the father of the complainant while being in touch with them on mobile phones, mobile phone of his co-prisoner from jail, namely, Rajvir Singh; that during the course of investigation it was revealed that regular calls were made from mobile phone 8283904306 to phone numbers of his co-accused to hatch the conspiracy; that during the investigation it was also revealed that tower location of the said mobile phone being used by respondent no.1 herein – Inderpreet Singh

was near Central Jail, Kapurthala; according to the investigating agency that during detailed investigation it came to the fore that one Harjinder Singh was lodged in Kapurthala Jail in a NDPS case who was co-villager of another prisoner namely Rajvir Singh lodged in the same jail and after being released on bail, Harjinder Singh on demand gave sim card and phone to Rajvir Singh inside the jail and this phone was being used by respondent no.1 – Inderpreet Singh to hatch conspiracy with other co-accused; that thereafter on completion of the investigation the investigating officer has filed the chargesheet against the accused including respondent no.1 herein for the offences under Sections 302, 120-B, 34, 201 IPC and Section 25 of Arms Act, 1959 in the court; that respondent no.1 herein – Inderpreet Singh thereafter filed an application under Section 439 Cr.P.C. in the Court of Learned Sessions Judge, Jalandhar; that by order dated 15.01.2021, the learned Sessions Judge, Jalandhar dismissed the said application and refused to release respondent no.1 herein on bail; that thereafter respondent no.1 – Inderpreet Singh approached the High Court seeking grant of regular bail by way of application being CRM-M No.11809/2021; that by the impugned judgment and order the High Court has released respondent no.1 herein – accused on bail by observing that it is not in dispute that the accused had not fired or had participated directly in the occurrence as he was in custody and that the factum of the accused using a mobile

phone within the jail premises is a fact which would be debatable as the possession of a mobile phone by him in jail premises would be required to be established and that he has been behind bars since the last about five months and was present in jail when the occurrence took place and further detention of the accused in such circumstances would not be justified.

3.3 Feeling aggrieved and dissatisfied with the impugned judgment and order releasing respondent no.1 – Inderpreet Singh on bail in connection with FIR No. 245 dated 21.09.2020 at Police Station Sadar Jalandhar, District Jalandhar for the offences under Sections 302, 120-B, 34, 201 IPC and Section 25 of Arms Act, 1959, the original informant – complainant and son of the deceased Mann Singh has preferred the present appeal.

4. Shri Ish Puneet Singh, learned Advocate has appeared on behalf of the appellant, Mrs. Jaspreet Gogia, learned Advocate has appeared on behalf of the State of Punjab and Shri Sant Pal Singh Sidhu, learned Advocate has appeared on behalf of the accused Inderpreet Singh – respondent no.1 herein.

4.1 Learned Counsel appearing on behalf of the appellant – original complainant has vehemently submitted that in the facts and circumstances of the case the High Court has committed a grave error in releasing respondent no.1 herein on bail.

4.2 It is submitted that while releasing respondent no.1 on bail the High Court has not at all considered the seriousness of the offence; the specific allegation in the FIR that even while in jail he hatched the conspiracy along with other co-accused and that he was the master mind and the main conspirator.

4.3 It is submitted that the High Court has also not at all considered the antecedents of the accused and motive behind commission of the offence and threat perceptions to the complainant and his family members.

4.4 It is submitted by the learned counsel appearing for the complainant that earlier respondent no.1 has been convicted in three other cases and while he was on bail granted by the High Court while suspending the sentence, the accused – respondent no.1 herein had committed one other offence and has tried to kill the complainant and his family members. It is submitted that in fact the accused who has been convicted in other cases had earlier been granted bail in other case and on account of having misused the concession of bail, his bail was cancelled. It is submitted that therefore there is a very likelihood that the accused if granted bail would misuse the concession again.

4.5 It is submitted that the High Court has failed to take into consideration the antecedents of respondent no.1 – accused, while

granting him bail. It is submitted that he has been convicted in four other FIRs.

4.6 It is submitted that the High Court has materially erred in not considering the relevant material/evidence collected during the course of investigation connected to respondent no.1 – accused and the High Court has failed to notice that there is ample material collected during the investigation establishing that from the jail respondent no.1 has hatched conspiracy along with other co-accused.

4.7 It is submitted that the High Court has failed to consider that respondent no.1 – accused is a habitual offender and therefore it would not be proper to release him on bail.

4.8 It is submitted that one of the grounds on which the High Court has released respondent no.1 on bail is that he has been behind bars since last 4-5 months. It is submitted that looking to the seriousness of the offence and his antecedents and he being the habitual offender, merely because he was behind bars since last about 4-5 months cannot be a ground to release him on bail in a serious offence of committing the murder and destroying the evidence.

4.9 Making the above submissions, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court releasing respondent no.1 - accused on bail.

5. Mrs. Jaspreet Gogia, learned Advocate appearing on behalf of the State of Punjab has supported the appellant. She has relied upon a detailed counter affidavit filed on behalf of the State. It is submitted that respondent no.1 – accused is a habitual offender and is after the life of the complainant/appellant herein and his family members. It is submitted that he repeatedly committed offence of attempt to murder of the complainant herein thrice and was convicted in all the three FIRs and is undergoing sentence in those cases.

5.1 It is submitted that every time he was granted bail in the said FIRs, he came out of the jail, committed another offence and then again went to jail. It is submitted that by order dated 26.07.2019 when the bail/suspension of sentence of respondent no.1 and co-accused Jaskaran Singh @ Jassa was cancelled by the High Court, respondent no.1 surrendered back to the jail but co-accused Jaskaran Singh @ Jassa jumped the bail and is absconding since then; he has been declared proclaimed offender. It is submitted that taking advantage of the situation, respondent no.1 while being lodged in Central Jail, Kapurthala hatched conspiracy with other co-accused Jaskaran Singh, Bahadur Singh and Satvinder Singh to commit murder of the father of the appellant herein.

5.2 It is submitted that during the course of the detailed investigation, it was revealed that mobile phone was used by the accused and others

while in jail. Thereafter, further enquiry was conducted by the jail authorities and the SSP, Kapurthala and it was found during the said enquiry that the mobile in question was being used by prisoner Rajvir Singh and the accused – respondent no.1 herein to make calls outside the jail and accordingly FIR No. 209 dated 1.8.2021 is registered under Section 52-A Prisons Act, 1894 at P.S. Kotwali, Kapurthala.

5.3 It is submitted that after completion of investigation in case FIR No. 245 dated 21.09.2020 all the accused persons including respondent no.1 herein have been chargesheeted for the offences under Sections 302, 120-B, 34, 201 IPC and Section 25 of Arms Act, 1959 before the learned Additional Sessions Judge, Jalandhar and the learned Sessions Court is to frame the charges. It is submitted that there is ample evidence against the accused Inderpreet Singh – respondent no.1 herein.

6. The present appeal is vehemently opposed by Shri Sant Pal Singh Sidhu, learned counsel appearing on behalf of respondent no.1 – accused. It is submitted that in the facts and circumstances of the case, no error has been committed by the High Court in releasing the accused on bail.

6.1 It is submitted that it is not in dispute that when the incident in question took place, respondent no.1 herein was in jail and nothing is on record to show that respondent no.1 had participated directly in the

occurrence. It is submitted that as rightly observed by the High Court the factum of the accused Inderpreet Singh using a mobile phone within the jail premises is a fact which would be debatable as the possession of a mobile phone by the accused in jail premises would be required to be established. It is submitted that therefore and when the investigation was completed and the chargesheet was already filed, no further custodial investigation was required and therefore the accused – Inderpreet Singh has been rightly released on bail by the High Court.

6.2 It is further submitted that after grant of bail to respondent no.1 herein in the present case, he has never misused the concession of bail. It is submitted that as per the settled law, different parameters are there for grant of bail and to cancel the bail. It is submitted that once the bail is granted by the Court of law, the same can be cancelled on account of misuse of bail. It is submitted that as in the present case after respondent no.1 herein – accused Inderpreet Singh was released on bail he has not misused the concession of bail granted to him and therefore this is not a fit case to cancel the bail. Therefore, it is prayed to dismiss the present appeal.

7. We have heard the learned counsel for the respective parties at length.

Before considering the rival submissions on behalf of the respective parties, few decisions of this Court on how to exercise the

discretionary power for grant of bail and the duty of the appellate court, particularly when bail was refused by the court(s) below and the principles and considerations for granting or refusing the bail are required to be referred to and considered.

7.1 In the case of *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P., (1978) 1 SCC 240*, this Court has observed and held that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. The nature of the charge is a vital factor and the nature of the evidence is also pertinent. The severity of the punishment to which the accused may be liable if convicted also bears upon the issue. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. The Court has also to consider the likelihood of the applicant interfering with the witnesses for the prosecution or otherwise polluting the process of justice. It is further observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

7.2 In the case of *Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446*, this Court in paragraphs 17 to 19 observed and held as under:

“17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, “it is regulated freedom”.

18. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires. Not for nothing J. Oerter stated:

“Personal liberty is the right to act without interference within the limits of the law.”

19. Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act.”

7.3 In the case of *State of Maharashtra v. Sitaram Popat Vetal, (2004) 7 SCC 521*, it is observed and held by this Court that while granting of

bail, the following factors among other circumstances are required to be considered by the Court:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and

3. Prima facie satisfaction of the court in support of the charge.

It is further observed that any order *dehors* such reasons suffers from non-application of mind.

7.4 In the case of *Mahipal v. Rajesh Kumar (2020) 2 SCC* 118, where the High Court released the accused on bail in a case for the offence under Section 302 of the IPC and other offences recording the only contention put forth by the counsel for the accused and further recording that "taking into account the facts and circumstances of the case and without expressing the opinion on merits of case, this Court deems fit just and proper to enlarge/release the accused on bail", while setting aside the order passed by the High Court granting bail, one of us (Dr. Justice D.Y. Chandrachud) observed in paragraphs 11 and 12 as under:

> "11. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 CrPC to grant bail. The power to grant bail under Section 439 is of a wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course. In Ram Govind Upadhyay v.

Sudarshan Singh (2002) 3 SCC 598, Umesh Banerjee, J. speaking for a two-Judge Bench of this Court, laid down the factors that must guide the exercise of the power to grant bail in the following terms:

> "3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. … The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.
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> 4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:
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> (a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.
>
> (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.
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> (c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.
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> (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the

> considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

7.5 That thereafter this Court considered the principles that guide while assessing the correctness of an order passed by the High Court granting bail. This Court specifically observed and held that normally this Court does not interfere with an order passed by the High Court granting or rejecting the bail to the accused. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. This Court further observed that the power of the appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for cancellation of bail. It is further observed that the correctness of an order granting bail is tested on the anvil of whether there was a proper or arbitrary exercise of the discretion in the grant of bail. It is further observed that the test is whether the order granting bail is perverse, illegal or unjustified. Thereafter this Court considered the difference and distinction between an application for cancellation of bail and an appeal before this Court challenging the order passed by the appellate court granting bail in paras 13, 14, 16 and 17 as under:

> "13. The principles that guide this Court in assessing the correctness of an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order

dated 11-1-2010 (Cal)] passed by the High Court granting bail were succinctly laid down by this Court in Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496. In that case, the accused was facing trial for an offence punishable under Section 302 of the Penal Code. Several bail applications filed by the accused were dismissed by the Additional Chief Judicial Magistrate. The High Court in turn allowed the bail application filed by the accused. Setting aside the order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] of the High Court, D.K. Jain, J., speaking for a two-Judge Bench of this Court, held:

> "9. … It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:
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> (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 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, behaviour, means, position and standing of the accused;
> (vi) likelihood of the offence being repeated;
> (vii) reasonable apprehension of the witnesses being influenced; and
> (viii) danger, of course, of justice being thwarted by grant of bail.
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> 10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of nonapplication of mind, rendering it to be illegal."

14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in

the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

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.(2014) 16 SCC 508, the accused was granted bail by the High Court [Mitthan Yadav v. State of U.P.[2014 SCC OnLine All 16031]. In an appeal against the order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] 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. held:

> "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 case of 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. The order

[Rajesh Kumar v. State of Rajasthan, 2019 SCC OnLine Raj 5197] of the High Court in the present case, insofar as it is relevant reads:

> "2. Counsel for the petitioner submits that the petitioner has been falsely implicated in this matter. Counsel further submits that, the deceased was driving his motorcycle, which got slipped on a sharp turn, due to which he received injuries on various parts of body including ante-mortem head injuries on account of which he died. Counsel further submits that the challan has already been presented in the court and conclusion of trial may take long time.
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> 3. The learned Public Prosecutor and counsel for the complainant have opposed the bail application.
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> 4. Considering the contentions put forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this Court deems it just and proper to enlarge the petitioner on bail." Thereafter this Court set aside the order passed by the High Court releasing the accused on bail."

Thereafter, this Court set aside the order passed by the High Court releasing the accused on bail.

8. At this stage, a recent decision of this Court in the case of Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (koli) 2021 (6) SCALE 41 is also required to be referred to. In the said decision, this Court considered in great detail the considerations which govern the grant of bail, after referring to the decisions of this Court in the case of Ram Govind Upadhyay (Supra); Prasanta Kumar Sarkar (Supra); Chaman Lal vs. State of U.P. (2004) 7 SCC 525; and the decision of this Court in Sonu vs. Sonu Yadav 2021 SCC Online SC 286. After considering the law laid down by this Court on grant of bail, in the

aforesaid decisions, in paragraphs 20, 21, 36 & 37 it is observed and held as under:

> "20. The first aspect of the case which stares in the face is the singular absence in the judgment of the High Court to the nature and gravity of the crime. The incident which took place on 9 May 2020 resulted in five homicidal deaths. The nature of the offence is a circumstance which has an important bearing on the grant of bail. The orders of the High Court are conspicuous in the absence of any awareness or elaboration of the serious nature of the offence. The perversity lies in the failure of the High Court to consider an important circumstance which has a bearing on whether bail should be granted. In the two-judge Bench decision of this Court in Ram Govind Upadhyay v. Sudharshan Singh, the nature of the crime was recorded as "one of the basic considerations" which has a bearing on the grant or denial of bail. The considerations which govern the grant of bail were elucidated in the judgment of this Court without attaching an exhaustive nature or character to them. This emerges from the following extract:
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> > "4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:
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> > (a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.
> > (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.
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> > (c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.
> >
> > (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."
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> 21. This Court further laid down the standard for overturning an order granting bail in the following terms:

> "3. Grant of bail though being a discretionary order -- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained."
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36. Grant of bail under Section 439 of the CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail - as in the case of any other discretion which is vested in a court as a judicial institution - is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice. This Court in Chaman Lal v. State of U.P (2004) 7 SCC 525 in a similar vein has held that an order of a High Court which does not contain reasons for prima facie concluding that a bail should be granted is liable to be set aside for nonapplication of mind. This Court observed:

> "8. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications. Yet a court dealing with the bail application should be satisfied, as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.
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> 9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence…"

37. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail "without discussing the evidence in detail" taking into consideration:

(1) The facts of the case;

(2) The nature of allegations;

(3) Gravity of offences; and

(4) Role attributed to the accused."

9. Applying the law laid down by this Court in the aforesaid decisions on grant of bail to the facts of the case on hand, the impugned order passed by the High Court releasing the accused on bail is not sustainable for the following reasons:

(i) that respondent no.1 – accused Inderpreet Singh along with other co-accused has been chargesheeted for the offences under sections 302, 120-B, 34, 201 IPC and Section 25 of Arms Act, 1959 for having killed the father of the complainant – appellant herein;

(ii) that while in custody in jail, respondent no.1 – accused Inderpreet Singh hatched the conspiracy with the other co-accused;

(iii) that during the course of the investigation, the investigating officer collected relevant material on hatching the conspiracy from jail along with other co-accused; and

(iv) that respondent no.1 – accused Inderpreet Singh was in constant touch on mobile with the other co-accused.

10. The High Court has failed to appreciate and consider the nature of the accusation and the severity of the punishment in case of conviction and the nature of supporting evidence. The High Court has also failed to appreciate the facts of the case; the nature of allegations; gravity of offence and the role attributed to the accused. As per the allegations, the accused Inderpreet Singh, respondent no.1 herein is the main conspirator who hatched the conspiracy along with other co-accused and

that too from the jail. The High Court has also failed to notice the serious allegation of hatching conspiracy from the jail. The High Court ought to have considered that if respondent no.1 – accused Inderpreet Singh can hatch the conspiracy from jail, what he will not do if he is released on bail. As such, in the present case, the High Court has failed to notice that earlier respondent no.1 - accused has been involved in four cases and has been convicted and even while on bail during the pendency of the appeal against the conviction, again he indulged into similar activities and committed the offence. The details of the antecedents of respondent no.1 – accused are as under:

Sl. No.	FIR	Proceedings
1.	FIR No.12 dated 20.01.2010 u/s 307, 323, 324, 326, 452, 148, 149 IPC – P.S. Sadar, Jalandhar	• Convicted vide Judgment dated 13.03.2018 and ordered to undergo 10 years RI vide order of Sentence dated 15.03.2018 • CRA – S – 1897 – SB – 2018 pending before the Hon'ble Punjab and Haryana High Court. • Sentence suspended vide order dated 29.01.2019
2.	FIR No.203 dated 25.08.2010 u/s 341, 506, 34 IPC – P.S. Sadar, Jalandhar	• Convicted vide judgment dated 08.09.2017 and was sentenced to the period already undergone
3.	FIR No.33 dated 14.02.2011 u/s 307, 323, 325, 427, 148, 149 IPC – P.S. Sadar, Jalandhar	• Convicted and ordered to undergo 7 years RI vide Judgment and order of Sentence dated 25.09.2014 • CRA-S-4855-SB-2014 pending before the Hon'ble Punjab and Haryana High Court. • Sentence suspended vide order dated 22.04.2015 • Application for cancellation of bail preferred on account of threats issued to the complainant and other members and on account of registration of FIR No.67 dated 08.05.2016.

		• Bail/suspension of sentence granted vide order dated 22.04.2015 is cancelled vide order dated 26.07.2019 • SLP against order dated 26.07.2019 cancelling the bail/suspension of sentence is dismissed vide order dated 11.09.2019. • Despite the cancellation of bail respondent no.1/accused and co-accused Jaskaran Singh @ Jassa did not surrender. • Respondent No.1/accused was finally arrested, after issuance of repeated arrest warrants, on 18.07.2020. • Fresh application for suspension of sentence was dismissed by the Hon'ble High Court vide order dated 01.09.2020 considering the antecedents of respondent no.1/accused and concealment of facts.
4.	FIR No.67 dated 08.05.2016 u/s 323, 324, 326, 307, 341, 506, 148, 149 IPC – P.S. Sadar, Jalandhar	• Convicted and ordered to undergo 3 years RI vide Judgment and order of Sentence dated 30.03.2019

It is also required to be noted that earlier while respondent no.1 was released on bail by the High Court suspending the sentence in FIR No. 67 of 2016 by order dated 30.04.2019, again he committed the offence while on bail and his bail came to be cancelled by the High Court against which a special leave petition was preferred before this Court which came to be dismissed. It is to be noted that though the High Court cancelled the bail on 26.07.2019 and directed the Chief Judicial Magistrate, Jalandhar to take the accused into custody, despite issuance of arrest warrants against respondent no.1 herein and the co-accused Jaskaran Singh @ Jassa, they could not be arrested and respondent no.1 herein was finally arrested on 18.07.2020, and even the co-accused

Jaskaran Singh @ Jassa is still absconding. From the aforesaid, it can be seen that respondent no.1 herein is a habitual offender. On number of occasions, he has tried to kill the complainant/appellant herein and his family. He has repeatedly committed offence of attempting to murder the appellant herein/complainant thrice and has been convicted in all the three FIRs.

11. From the material on record, it is clear that as and when he is granted bail, he came out of the jail, committed another offence and again went to jail. Even the High Court cancelled the bail in another case vide order dated 26.07.2019 specifically observing that while on bail during the pendency of the appeal, they were involved in other cases of heinous crime. From the material on record, it appears that there is a high possibility of threat and danger to the life and safety of the appellant herein/complainant and his family members, as is evident from the criminal history of respondent no.1, detailed above.

12. The aforesaid relevant considerations are not at all considered by the High Court in its true perspective. Grant of bail to respondent no.1 herein does not appear to be in order. The antecedents of respondent no.1 herein; the threat perception to the appellant and his family members are also not considered by the High Court. We are of the opinion that the High Court has erred in granting bail to respondent no.1 herein without taking into consideration the overall facts, otherwise

having a bearing on exercise of its discretion on the issue. The order passed by the High Court fails to notice material facts and shows non-application of mind to the seriousness of the crime and circumstances, which ought to have been taken into consideration.

13. Considering the overall facts and circumstances of the case and the circumstances noted hereinabove and applying the law laid down by this Court in the aforesaid decisions on grant of bail, we are of the firm opinion that in the facts and circumstances of the case, the High Court has committed a grave error in releasing respondent no.1 – accused Inderpreet Singh on bail and therefore the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Consequently, the bail granted by the High Court to respondent no.1 herein – Inderpreet Singh in connection with FIR No. 245 dated 21.09.2020 at Police Station Sadar Jalandhar, District Jalandhar for the offences under Sections 302, 120-B, 34, 201 IPC and Section 25 of Arms Act, 1959 is hereby cancelled. Respondent no.1 herein – Inderpreet Singh is directed to surrender forthwith, failing which the learned trial Court is directed to take respondent no.1 – Inderpreet Singh into custody by issuing arrest warrants against him. Needless to say, that the observations made herein are only for the purpose of deciding the issue of granting bail to respondent no.1 herein and will have no bearing on the

trial of the case and the learned trial Court shall decide the case on its own merits, in accordance with law.

14. The appeal is accordingly allowed to the aforesaid extent.

…….J.
[Dr. Dhananjaya Y. Chandrachud]

New Delhi;
August 24, 2021.

…….J.
[M.R. Shah]