

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CRL.) No. 7481 OF 2024

IN THE MATTER OF:

Jagdish Narayan Meena ... Petitioner

Versus

State of Rajasthan & Anr. ... Respondent

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.
1/ STATE OF RAJASTHAN

PAPER-BOOKS

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ADVOCATE FOR THE RESPONDENT NO. 1: NIDHI JASWAL

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COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.
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1. That the present matter has been filed by the Petitioner (Complainant originally) challenging the order dated 19.10.2023 (*hereinafter referred to as "Impugned Order"*) passed by the Hon'ble High Court of Judicature for Rajasthan at Jaipur (*hereinafter referred to as "Hon'ble High Court"*) in Criminal Appeal SB No. 2591 of 2023 titled as *Brijbhan Singh Chauhan Vs. State of Rajasthan & Anr.*, whereby the Hon'ble High Court erred in granting the bail to Respondent No.2, by allowing the Criminal Appeal under Section 14A (2) of the SC & ST (Prevention of Atrocities) Act, 1989 filed by the Respondent No. 2, herein.

2. That the answering Respondent submits that the Hon'ble High Court erred while granting the bail to the Respondent No. 2 as the Hon'ble High Court not only failed to consider the material evidence against Respondent No. 2 but also failed to consider the gravity of the offence and additionally failed to record the reasons for granting bail to Respondent No. 2.

PRELIMINARY SUBMISSIONS:

1. The present case involves heinous crimes under sections 302, 364A 201, 34, 120B of the IPC & 3(2)(v) of the SC/ST Act and the Hon'ble High Court has erred while passing the Impugned Order as it not only considered the gravity of offence but also failed to consider the material evidence available on record which prima facie makes it very clear that the offence has been committed by Respondent No. 2 along with Yogendra Singh and Diwakar Tank & Others.
2. It is submitted that the Hon'ble High Court while granting bail to the Respondent No. 2/Accused has ignored the vital piece of evidence which prima facie proves that the Respondent No. 2/Accused had brutally murdered the deceased. The Hon'ble

High Court did not consider the fact that the dead body of the victim along with other articles were recovered on the basis of the statements made by the Accused/Respondent No. 2 under Section 27 of the Indian Evidence Act, 1872 which *prima facie* proves that the Respondent No. 2/Accused along with his friends has committed the offence. This Hon'ble Court in catena of judgments has held that the Appellate Court is required to consider whether order of granting bail suffers from non-application of mind or is not borne out from a *prima facie* view of the evidence on record. This Hon'ble Court in the matter titled as ***Mahipal v. Rajesh Kumar, (2020) 2 SCC 118*** has held as under:

“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.”

3. It is submitted that the Hon'ble High Court while granting bail to the Respondent No. 2/Accused has ignored the principles laid down by this Hon'ble Court for grant of bail. This Hon'ble

Court in the matter titled as *Ajwar Vs. Waseem, 2024 SCC OnLine SC 974* has stated that the court while granting bail are required to consider relevant factors such as nature of the accusation, role ascribed to the accused concerned, possibilities/chances of tampering with the evidence and/or witnesses, antecedents, flight risk et al. At this juncture, it is pertinent to point out that the investigation of the FIR bearing No. 305 of 2023 is still pending under Section 173(8) of CrPC and if the accused is granted bail, there is a strong possibility that he may influence the witnesses and also tamper with the evidence. Therefore, it is most humbly prayed that the bail granted to the Respondent No. 2/Accused may be cancelled. That this court in the aforesaid judgement of *Ajwar Vs. Waseem, 2024 SCC OnLine SC 974* has categorically held as under:

“26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of

obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail.”

4. It is submitted that the Hon’ble High Court failed to consider the severity of the potential punishment in the event of a conviction i.e., death or life imprisonment in the instant case, as well as the nature and quality of the evidence supporting the accusations. **It is submitted that the Respondent No. 2 has only undergone approx. 4 months in judicial custody and was thereafter enlarged on bail.** This Hon’ble Court in the matter titled as *State of Uttar Pradesh Vs. Amarmani Tripathi (2005) 8 SCC 21* has held as under:

“18. It is well settled that the matters 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 thwarted by grant of bail.”

3. It is a well-settled position of law that the Court has a duty to record reasons for its decisions. However, in the Impugned Order, the Hon’ble High Court has failed to provide reasons for granting bail to the Respondent No. 2/Accused. The Ld. Trial Court had taken into consideration the gravity of the offenses, evidence on record, and the facts and circumstances of the case, and accordingly, rejected the bail. It is submitted that the Hon’ble High Court gravely erred while reversing the well-reasoned Order passed by the Ld. Trial Court without stating the reasons for the grant of bail to Respondent No 2. This this Hon’ble Court in the case of *Deepak Yadav Vs. State of U.P., (2022) 8 SCC 559*;

“27. The importance of assigning reasoning for grant or denial of bail can never be undermined. There is prima facie need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious offence. The sound reasoning in a particular case is a reassurance that discretion has been exercised by the decision-maker after considering all the relevant

grounds and by disregarding extraneous considerations”.

4. That this Hon’ble Court in the matter titled as ***Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana, (2021) 6 SCC 230*** held that, while granting bail, the court has a duty to apply its judicial mind and to record reasons to ensure that the discretion entrusted to the court is exercised in a judicious manner.

*38. ...We disapprove of the observations of the High Court in a succession of orders in the present case recording that the counsel for the parties “do not press for a further reasoned order”. The grant of bail is a matter which implicates the liberty of the accused, the interest of the State and the victims of crime in the proper administration of criminal justice. It is a well-settled principle that in determining as to whether bail should be granted, the High Court, or for that matter, the Sessions Court deciding an application under Section 439 CrPC would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. These observations while adjudicating upon bail would also not be binding on the outcome of the trial. **But the court granting bail cannot obviate its duty to apply a judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail.***

5. This Hon'ble Court in the matter titled as *Mahipal Vs. Rajesh Kumar*, (2020) 2 SCC 118 has *inter-alia* held as under;

25. Merely recording “having perused the record” and “on the facts and circumstances of the case” does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.

6. It is submitted that in the present case, the evidence and information obtained through statements under Section 27 of the Indian Evidence Act clearly implicate Respondent No. 2. This evidence includes the recovery of the deceased's dead body, deceased's mobile phone, motorcycle, helmet, shoes, pants, and shirt. However, this crucial evidence was not taken into

consideration by the Hon'ble High Court, which necessitated the cancellation of bail by the appellate authority. As in the case of **Padmakar Takuram Bhavnagare v. State of Maharashtra (2012) 13 SCC 720**, it has been held that

“13. Generally speaking, the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of justice or abuse of the concession granted to the accused in any manner. These instances are illustrative and bail can be cancelled where the order of bail is perverse because it is passed ignoring evidence on record or taking into consideration irrelevant material. Such vulnerable bail orders must be quashed in the interest of justice.”

BRIEF FACTS:

7. That on 22.05.2023, the Petitioner's son, Hanuman Meena, now deceased, went for work at 10:00 A.M. as usual, riding a Green Bajaj Discover motorcycle bearing registration number RJ14-DA-8426. Later that day, the Petitioner's younger brother attempted to contact Hanuman on his mobile number '9667417204', but found it switched off. After waiting until 10:00 P.M. with no contact from Hanuman (now deceased), the Petitioner lodged a missing complaint at 11:00 P.M. Subsequently, a video call was made from

the deceased's phone to the Petitioner's WhatsApp. During the video call, the Petitioner saw Hanuman tied with ropes and his mouth gagged with a cloth. Thereafter, a second video call was then received wherein it showed Hanuman lying down in a vest. Following this, a third WhatsApp call from the same unknown person was received where the said unknown person demanded a "Khokha." When the petitioner expressed ignorance of the term "Khokha," the unknown person clarified that he was demanding Rs 1 crore. The unknown person instructed the Petitioner to make arrangements for the money by 25.05.2023 failing which the said unknown person threatened to kill family members of the Petitioner herein if the Petitioner attempts to inform the police or attempt any intervention.

8. Thereafter, on 23.05.2023, the Petitioner submitted a written report based on the aforementioned events at Police Station, Sanganer, Jaipur, where FIR No. 305/2023 under Section 364 of the Indian Penal Code, 1860 (*hereinafter referred to as the "IPC"*) was registered.
9. Subsequently, a CDR (Call Detail Record) analysis of Hanuman's mobile number '9667417204' was conducted. Based on this

analysis, suspects Yogendra Singh, Diwakar Tank, and Brijbhan Singh were arrested.

10. During the investigation, on 25.05.2023. Respondent No. 2 gave a statement under Section 27 of the Evidence Act, 1872, and disclosed as to how Respondent No. 2 along with Yogendra Singh and Diwankar Tank demanded Rs. 1 Crore as ransom against Hanuman Meena being held as hostage and upon their plan failing, Respondent No. 2, Yogendra Singh and Diwankar Tank killed Hanuman Menna. Further, to destroy the evidence, they disposed of his body in Dravyavati River.
11. Pursuant thereto, on 25.05.2023 at around 4:30 A.M., the police recovered a white colored plastic bag from the location wherein Respondent No. 2 along with Yogendra Singh and Diwankar Tank stuffed Hanuman Meena's body after killing him and thrown him into Dravyavati River.
12. On 28.05.2023, Respondent No. 2 vide another statement under Section 27, Evidence Act, 1872, disclosed as to where he hid Hanuman Meena's motorcycle, helmet and shoes after he killed the deceased. Pursuant thereto, the police recovered Hanuman

Meena's motorcycle bearing registration No. RJ14DA8426 from the location where Respondent No. 2 hid Hanuman Meena's motorcycle.

13. On 28.05.2023, Respondent No. 2, under the statement recorded under Section 27 of the Evidence Act, 1872, disclosed, where he along with his younger brother Yogendra Singh hid Hanuman Meena's clothes after killing him. On 28.05.2023. the Police recovered a White coloured Shirt and a Black coloured Pant from Sector 17, Pratapnagar, under a tree.
14. That on 20.08.2023., the investigating officer had filed the Charge Sheet No. 01 before SC/ST Court, Jaipur, Mahanagar, where offences under Sections 302, 364A, 201, 34, 120B of IPC and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 have been made out against Respondent No. 2, Yogendra Singh and Diwankar Tank. It is submitted that further investigation is pending against 2 more persons, who are believed to be friends of the Respondent No. 2/Accused under Section 173(8) of CrPC.

15. Thereafter, Respondent No. 2 preferred an application for bail before the Learned Special Court for SC/ST (Prevention of Atrocities) cases, Jaipur Metropolitan-First.
16. Pursuant thereto, on 22.08.2023, the Learned Special Court for SC/ST (Prevention of Atrocities) Cases, Jaipur Metropolitan-First rejected the Bail Application No. 212/2023 after considering all the facts and circumstances of the case, evidence on record and the gravity of offence committed by Respondent No. 2.
17. Thereafter, being aggrieved by the order dated 22.08.2023. from the Learned Special Court for SC/ST (Prevention of Atrocities) Cases, Jaipur Metropolitan-First in Bail Application No. 212/2023, Respondent No. 2 & Diwakar Tank filed SB Criminal Appeal (SB) No. 2711/2023 before the Hon'ble High Court of Judicature for Rajasthan at Jaipur.
18. Consequently, on 19.10.2023, the Hon'ble High Court, in the cases of *Brijbhan Singh Chauhan v. State of Rajasthan & Anr* (SB Criminal Appeal (SB) No. 2591/2023) and *Diwakar Tank v. State of Rajasthan & Anr* (SB Criminal Appeal (SB) No. 2711/2023), passed the impugned order whereby the Hon'ble High Court

allowed the appeals, and directed Respondent No. 2 and Diwankar Tank's release on bail.

19. That the answering Respondent have not pleaded in the Counter Affidavit any new or additional facts or documents which are not pleaded before the courts below.

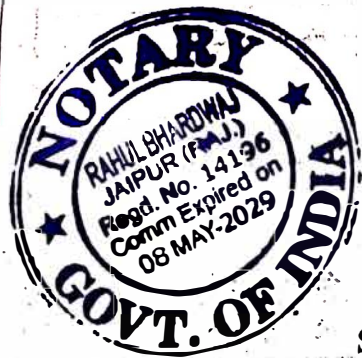
**AND FOR THIS ACT OF KINDNESS THE RESPONDENT
AS IN DUTY BOUND SHALL EVER PRAY.**



(NIDHI JASWAL)

ADVOCATE FOR THE RESPONDENT NO. 1

Place: New Delhi
Dated:-03.10.2024



15

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... Respondent

AFFIDAVIT

I, Asharam Choudhary, son of Shri Bhoma Ram, aged about 56 years, presently posted as Addl. Deputy Commissioner of Police, Jaipur East, Rajasthan, having office at Police Commissionerate, Jaipur, Rajasthan – 302001, do hereby solemnly affirm as under:

1. That I am the Officer in-Charge in the instant Special Leave Petition and am well conversant with the facts and circumstances of the case and thus competent to swear this affidavit.
2. That the accompanying counter affidavit has been drafted under my instructions, which I have read and understood. I further state that the averments made therein are true and correct to my knowledge.
3. That the annexures filed along with the application are true copies of their respective originals.

DEPONENT

VERIFICATION

Verified at Jaipur on this 03rd day of October 2024 that the contents of my aforesaid affidavit are true and correct to my knowledge. No part of it is false nor anything material has been concealed therefrom.

ATTESTED

NOTARY PUBLIC
JAIPUR (RAJ.) INDIA

DEPONENT

03 OCT 2024