

complainant and the State of Bihar have preferred these appeals, by way of special leave, *inter alia*, on several pleas, amongst others, that the respondent-accused has an infamous criminal history/antecedents of about 60 odd cases pending against him at various stages of trial and appeal on his conviction before the various courts in Bihar as well as in the High Court.

3) We have heard Mr. Prashant Bhushan, learned Counsel appearing for the Complainant, Mr. Dinesh Dwivedi, learned senior counsel appearing for the State of Bihar and Mr. Shekhar Naphade, learned senior counsel appearing for the accused-respondent No.2.

4) Mr. Prashant Bhushan, learned counsel appearing for the complainant contended that the High Court committed a gross error in granting bail to the respondent-accused and did not consider the contents of the F.I.R. as well as the fact that he is a habitual offender, and that he has in the meantime been awarded two sentences of life imprisonment and also named in several criminal cases. The learned counsel further urged that the respondent-accused is a category-A history sheeter in view of his persistent criminal antecedents and as in the case in hand, he has been charged with the offence of facilitating murder of a witness in a case in which he was being tried, he ought not to have been

granted bail in any view of the matter.

5) Mr. Dinesh Dwivedi, learned senior counsel appearing for the State of Bihar, submitted that the Court must take into account the antecedents of the accused before granting bail in these type of cases and, in support of his contention, referred to Section 437 of the Cr.P.C. He further submitted a chart of several cases pending against the respondent-accused where he has been convicted/charged, amongst others, under various Sections i.e. 302, 307/34, 324, 353, 364, 147, 148, 149 of the IPC and Sections 25(14), 35 & 27 of the Arms Act.

6) Mr. Shekhar Napahde, learned senior counsel appearing for the respondent-accused submitted that the High Court granted bail on the ground that the trial could not be completed within a period of nine months, as directed by the High Court vide order dated 03.02.2016 while rejecting his earlier prayer for bail in the same case. He further submitted that as it would appear from the records, the prosecution is deliberately delaying the trial so as to protract his detention. He also pointed out that this design of the State would be evident from the fact that he has been transferred from Siwan Jail to Bhagalpur Central Jail, without following the procedure prescribed by law.

7) Mr. Naphade, learned senior counsel further contended that in the earlier case in which the respondent-accused had faced trial under Sections 302/364A/201 and 120B IPC and had been convicted thereunder and against which appeal is presently pending before the High Court, the police witnesses had on oath stated that on the date of the incident, he was in jail custody.

8) Mr. Naphade also urged that, having regard to the categorical direction issued by the High Court in its order dated 3.2.2016, while rejecting the prayer for bail of the respondent-accused, to expedite the commitment of the case and to complete the trial preferably within nine months after the receipt of the records in the Sessions Court, the order impugned is perfectly justified in the facts and circumstances of the case, more particularly in view of the indifference of the prosecution to this mandate and the dilatory tactics adopted by the State in delaying the conduct of the trial. Learned senior counsel has further emphasised that though a host of cases has been registered against the respondent-accused as on date, he has been granted bail in all of them. He also added that prior to the grant of his bail by the order impugned, he had been in judicial custody for approximately eleven years in several cases.

9) We have cautiously analysed the rival contentions and the materials available on record. For obvious reasons, more particularly having regard to the present stage of the case in which the impugned order has been passed, we consider it inexpedient to dwell on factual details. The crux of the charge against the respondent-accused in the case in hand is that he had entered into an conspiracy and in furtherance thereof, had eliminated a witness in an earlier case against him under Sections 302/364A/201 and 120B IPC, days before he was to finally testify in support of the charge.

10) Although it has to be accepted that the respondent-accused has already been granted bail by the concerned courts in other cases, a duty is cast upon the Court in addressing such a prayer in a case on its own merit, and while applying its discretion, it must be applied in a judicious manner and not as a matter of course. In support of this proposition, Mr. Bhushan has relied upon a decision of this Court in *Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and Another*, (2004) 7 SCC 528, wherein it was held in para 11 as follows:

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence

and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 and *Puran v. Rambilas*, (2001) 6 SCC 338.)

11) This Court in *Rajesh Ranjan Yadav @ Pappu Yadav vs. CBI through its Director* (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof:

"We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

12) In *Ash Mohammad vs. Shiv Raj Singh @ Lalla Babu and another* (2012) 9 SCC 446, this Court in the same vein had observed that though the period of custody is a relevant factor, the same has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents. That these are to be weighed in the scale of collective cry and desire and that societal concern has to be kept in view in juxtaposition to individual liberty, was underlined.

13) In the instant case, having regard to the recorded allegations against the respondent-accused and the overall factual scenario, we are of the view, having regard in particular to the present stage of the case in which the impugned order has been passed, that the High Court was not justified in granting bail on the considerations recorded. Qua the assertion that the respondent-accused was in judicial custody on the date on which the incident of murder in the earlier case had occurred, the judgment and order of the trial court convicting him has recorded the version of the brother of the deceased therein, that he had seen the respondent-accused participating in the offence. We refrain from elaborating further on this aspect as the said judgment and order of the trial court is presently *sub judice*

in an appeal before the High Court.

14) On a careful perusal of the records of the case and considering all the aspects of the matter in question and having regard to the proved charges in the concerned cases, and the charges pending adjudication against the respondent-accused and further balancing the considerations of individual liberty and societal interest as well as the prescriptions and the perception of law regarding bail, it appears to us that the High Court has erred in granting bail to the respondent-accused without taking into consideration the overall facts otherwise having a bearing on the exercise of its discretion on the issue.

15) Judged on the entire conspectus of the attendant facts and circumstances and considering the stage of the present case before the trial court where charge-sheet has already been submitted, together with pending proceedings against the respondent-accused as on date, and his recorded antecedents in the various decisions of this Court, we are thus unable to sustain the impugned order of the High Court granting bail to him.

16) In view of the above, the order passed by the High Court granting bail to the respondent-accused is set aside and the State is directed to take all consequential steps,

inter alia, for taking him to custody forthwith.

17) The appeals are allowed in the afore-stated terms.

18) However, we make it clear that we have not expressed any opinion on the merits of the case and direct the State and the concerned Court to take all steps as contemplated in law to dispose of the case, as early as possible.

..... J.
(PINAKI CHANDRA GHOSE)

..... J.
(AMITAVA ROY)

New Delhi;
September 30, 2016.