HIGH COURT OF MADHYA PRADESH
GWALIOR BENCH

SINGLE BENCH

JUSTICE G.S. AHLUWALIA

M.Cr.C. No. 46653 of 2021

State of MP
Vs.
Smt. Bhuri Bai

Shri Prashant Singh, Advocate General with Shri MPS Raghuvanshi, Additional Advocate General for the applicant/State.
Shri Sanjay Gupta, Counsel for the respondent.

Date of Hearing : 08.02.2022
Date of Judgment : 10.02.2022
Approved for Reporting : Yes

O R D E R
10th - February - 2022

This application has been registered under Section 439(2) of CrPC in exercise of *suo motu* power by this Court by order dated 07.09.2021 passed in M.Cr.C. No.41406/2021 and a show cause notice was issued to the respondent as to why the bail granted by the Trial Court be not cancelled.

2. It is not out of place to mention here that the respondent was absconding and could be arrested only on 16.07.2021. It is also not out of place to mention here that the deceased died within a period of four years from the date of her marriage and, accordingly, Crime No.96/2020 was registered at Police Station Devgarh District Morena

for offence under Sections 498-A, 304-B and 34 of IPC and Section 3/4 of Dowry Prohibition Act. The husband of the deceased as well as the husband of the respondent were arrested. Their bail applications were rejected. The husband of the respondent namely Charan Singh was arrested on 22.09.2020.

3. The husband of the deceased namely Pankaj Singh Sikarwar moved his second application under Section 439 of CrPC which was registered as M.Cr.C. No.41406/2021 as his first bail application was rejected mainly on the ground that his mother (respondent) is still absconding. It was submitted by the counsel for Pankaj Singh Sikarwar that now her mother has surrendered on 16.07.2021 and she has been granted bail by the Sessions Court by order dated 05.08.2021 and, accordingly, the order dated 05.08.2021 passed by the First Additional Sessions Judge, Jaura District Morena in B.A. No.357/2021 was also placed on record.

4. Considering the fact that the Trial Court did not consider the fact of abscondance of the respondent and, accordingly, record of B.A. No.357/2021 was called and after going through the said record, this Court found that in the bail application, it was mentioned that co-accused Gudiya @ Reema Sikarwar has been granted anticipatory bail by this Court by order dated 02.11.2020 passed in M.Cr.C. No.41347/2021 and similarly, Subedar Singh has been granted anticipatory bail by the Additional Sessions Judge, Jaura District Morena by order dated 08.11.2020 passed in B.A. No.972/2020 and

the co-accused Charan Singh has also been granted bail. It was also mentioned in the bail application that the supplementary charge-sheet has also been filed against the respondent on 02.08.2021. It was further submitted that the respondent is an old lady and medically sick and in case, if she is not released on bail, then it may be detrimental to her life and her family may come on the verge of starvation.

5. While deciding M.Cr.C. No.41406/2021, this Court came to a conclusion that it is clear from the application filed by the respondent that she has not given any explanation as to why she was absconding specifically when her husband and her family members were already facing trial. The deceased died on 11.09.2020 and the charge-sheet against the accused persons was filed on 13.12.2020 and it was specifically mentioned that the respondent is absconding. While deciding M.Cr.C. No.41406/2021, this Court came to a conclusion that the Court below has not applied its mind to the allegations levelled against the respondent and, accordingly, the show cause notice was issued as to why the bail granted to the respondent may not be cancelled.

6. The allegations against the respondent are that the deceased was married to the son of the applicant about four years back and the respondent and her father-in-law as well as other in-laws were harassing the deceased on account of non-fulfillment of demand of motorcycle and an amount of Rs.50,000/-. The respondent was

arrested on 16.07.2021, i.e., approximately 10 months after the death of the deceased and seven months after the charge-sheet was filed against the co-accused persons. She surrendered only after her husband was granted bail.

7. It is submitted by the counsel for the respondent that in fact, the deceased had left her minor child and since the in-laws were either on run or were in jail, therefore, it was the respondent only who was looking after minor child of the deceased and only when husband was granted bail, she handed over the child to her husband and surrendered before the Trial Court. This explanation given by the respondent cannot be said to be plausible specifically when no such fact was mentioned in the bail application filed before the Court below.

8. There is one more disturbing fact in the present case. When the notices were issued to the respondent, the Superintendent of Police, Morena did not respond as to whether the notices are served or not and ultimately this Court was compelled to seek explanation of the Superintendent of Police, Morena with regard to his failure to serve notice on the respondent. Later on, it was found that not only, the District Police, Morena is negligent in executing the summons/bailable warrants/warrants which are issued against the accused persons or the witnesses including their own police personnel, but they are not responding to the Court also. Accordingly, on different occasions, opportunities were given to Shri Lalit

Shakyawar, the then Superintendent of Police, Morena to improve his working, but all the efforts made by the Court went in vain. Accordingly, this Court was left with no other option, but to direct the Director General of Police to file his affidavit. A supplementary affidavit has been filed by the Director General of Police on 05.02.2022, which reads as under:-

"**BEFORE THE HIGH COURT OF JUDICATURE MADHYA PRADESH BENCH AT GWALIOR**

M.CR.C. No.46653 of 2021

In the matter of:

PETITIONER : State of Madhya Pradesh

Versus

RESPONDENT : Smt. Bhuri Bai

AFFIDAVIT

Name	-	Vivek Johri
Father's name	-	Late Shri K.B. Johri
Aged	-	61 years
Occupation	-	Director General of Police, Police Headquarters, Bhopal
Resident	-	Bhopal (M.P.)

Most respectfully showeth:

I, the above named deponent, solemnly affirm on oath and state as under -

(1) That, I am working as Director General of Police, State of M.P., PHQ, Bhopal (M.P.).

(2) That, this Hon'ble Court vide order dated 25.01.2022, directed deponent to file a personal affidavit in connection with certain issues pertaining to laxity observed by this Hon'ble Court on the part of District Police, Morena regarding service/execution of summons/bailable warrants of arrest/non-bailable warrants of arrest/perpetual warrants of arrest. The point wise clarifications on the points as directed by this Hon'ble Court vide aforesaid order dated 25.01.2022 are being enumerated in the following clauses.

(3) That, it is a fact that said circular dated 30.03.2019 and 03.04.2019 were issued in connection with service/execution of notices/warrants issued by the Hon'ble High Court but there are a number of other circulars have been issued from the PHQ on time to time for service/execution of summons/warrants issued by the trial courts also. Also, circulars dated 07.07.2012, 29.08.2012 and 30.10.2014 were specifically from the PHQ for ensuring appearance of police officers before the trial courts. The copies of various circulars issued in this regard are enclosed herewith on **Annexure-A/1** for perusal of this Hon'ble Court.

(4) That, it is submitted that, the circulars dated 30.03.2019 and 03.04.2019 were issued subsequent to observing lapses in some districts of the state regarding service/execution of notices/warrants issued by the Hon'ble High Court and were intended to ensure service/execution of such notices/warrants on priority basis. However, at the same time it is also duty of the district police to comply with other circulars, through which directions were given to the district police for service/execution summons/warrants issued by the trial courts.

(5) That, vide judgment dated 05.12.2018 passed in the matter of Mahender Chawla & others Vs Union of India the Witness Protection Scheme as proposed by the Union Government was implemented forthwith and state is also bound to implement it and adhere to the same.

(6) That, in compliance with the directions issued by the Hon'ble Apex Court in the matter of Mahender Chawla & others Vs Union of India a circular dated 07.11.2020 has been issued from the PHQ, Bhopal, whereby instructions have been issued to all the Supdts. of Police of the state for adhering to the guidelines issued by the Hon'ble Supreme Court till the separate witness protection scheme of the state implemented. Copy of the circular dated 07.11.2020 is enclosed herewith on **Annexure-A/2**. Also, separate law for the protection of witnesses is under consideration at the state Govt. level. The police department has also suggested some points to be incorporated in the proposed law. Copies of the correspondence letters and proposed draft Witness Protection Act, 2019 are attached herewith on **Annexure-A/3** for perusal of this Hon'ble Court.

(7) That, early completion of the trial is ultimate goal of the criminal justice system and police department is

committed to play its part with utmost responsibility in the whole criminal justice system.

(8) That, every agency including district police, which is conducting criminal investigations, is responsible till the final judgment passed by the trial court against the accused persons and police department is making every possible effort in securing presence of witnesses without any delay under direction of the trial courts. However, on some occasions despite of service/execution of summons/warrants witnesses fail to turn up on account of various reasons.

(9) That, delay in service/execution summons/warrants is unfortunate and such delay cause impediment in the speedy trial of the cases.

(10) It is humbly submitted that failure of individuals cannot be attributed as failure of the agencies. The police department is aware that early completion of the trial of every criminal case is must for delivery of justice and hence the department ensures every possible step for timely service/execution of warrants and due departmental action are being taken against the individuals, who are found to be derelict in this regard.

(11) It is further submitted that, release of any accused merely on the solitary ground of non-service/non execution of summons/warrants is regrettable and cannot be tolerated as a practice.

(12) That, the court moharirs are issuing summons/bailable warrants/Non-Bailabe warrants in consultation with conducting prosecutors and under directions of Ld Magistrate/Judge of the trial court. However, non-service/non-execution of summons/warrants may amount to negligent act on the part of some of the concerned police officials and may amount to misconduct on the basis of facts and circumstances related to each of such incidents. For sure, deliberate delay/omission in this regard is violation of rights of the victims and may cause undue delay in trial and pose threat to the victims.

(13) That, after service/execution of summons/warrants on a police personnel, his non-appearance before the court of law without any plausible reason is highly objectionable and such non-appearance that too without valid reasons and any prior intimation, is misconduct on the part of such police personnel and a preliminary inquiry may be instituted to fix his responsibility in this regard.

(14) It is submitted that, in case of non service a preliminary inquiry needs to be conducted for ascertaining

negligent or deliberate act of the concerned police personnel, who was deployed for service/execution of the summons/warrants.

(15) It is submitted that cognizance was already taken on the issue of non-appearance of police personnel in the trial of case related to MCRC No. 47332/2021 at PHQ level, even before the order dated 25.01.2022 passed by this Hon'ble court in the instant matter and considering the facts and graveness of the matter a Preliminary Enquiry (PE) was instituted in the matter vide order dated 12.01.2022 and an Addl. Supdt. of Police rank officer was appointed to conduct the PE. A copy of the said order dated 12.01.2022 issued from the PHQ is enclosed herewith on **Annexure-A/4**. The report of the PE is awaited and action against concerned police officials will be ensured accordingly.

(16) It is further submitted that an explanation of Shri Lalit Shakyawar, the then Supdt. of Police, Morena was sought in the present matter and the same is not found to be satisfactory. A report is being sent to the competent authority to take necessary action in this regard. The copy of the letter issued from the PHQ for seeking explanation of Shri Lalit Shakyawar is also enclosed herewith on **Annexure-A/5**.

(17) It is humbly submitted that on account of Covid-19 pandemic a total number of 4102 police personnel were reported positive in the state during year 2020, whereas 45 police officials died in this year. Also, a total number of 7402 police personnel were reported positive whereas 114 police personnel died in the year 2021 due to Covid-19. Also, a long duration in the year 2020 and 2021 elapsed under lockdown period and on covid containment area duties. Apart from this in order to avoid person to person contact during lockdown the normal crime work including the service/execution of summons/warrants was adversely affected. It is therefore submitted that that this Hon'ble court may take a compassionate view while considering the issue of service/execution of summons/warrants during Covid pandemic period.

(18) That, in compliance of the order/direction dated 25.01.2022 the deponent is submitting this affidavit for explaining the facts which deserves to be taken on record.

Date - 04.02.2022
Place – Bhopal

Deponent

Verification

I, the above named deponent, do hereby verify and declare on oath that the contents of this affidavit paragraphs 1 to 18 are true and correct to my knowledge and that no part of it is false nor anything is concealed there from.

Date - 04.02.2022
Place – Bhopal

Deponent"

9. Shri Prashant Singh, Advocate General has also assured this Court that the matter is being taken up in a most serious manner at the highest level and very soon there will be an improvement in the working of the police department and every efforts would be made to serve the summons/bailable warrants/warrants issued against the accused or the witnesses on the day one.

10. Under hope and belief that the police department would keep the words of the Advocate General, this Court is of the considered opinion that for the time being the question with regard to non-execution of summons/bailable warrants/warrants may be kept in abeyance in order to give an opportunity to police department to show that they have taken up this issue very seriously and they are working hard on this issue.

11. Accordingly, the aspect of non-execution of summons/bailable warrants/warrants is kept in suspended animation for the time being.

12. So far as the bail granted to the respondent is concerned, this Court has called the file of M.Cr.C. No.41406/2021 and has gone through the order passed by the Court below. As already pointed out,

except by mentioning the facts, nothing has been mentioned about the reasons for abscondance as well as why the respondent is entitled for bail. Thus, it is clear that the impugned bail order suffers from non-application of mind.

13. The Supreme Court in the case of **Manoj Kumar Khokhar Vs. State of Rajasthan and another** passed in **Criminal Appeal No. 36 of 2022** has held as under:-

> "**14.** Before proceeding further, it would be useful to refer to the judgments of this Court in the matter of granting bail to an accused as under:
>
> "a) In ***Gudikanti Narasimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh*- (1978) 1 SCC 240**, Krishna Iyer, **J.,** while elaborating on the content of Article 21 of the Constitution of India in the context of liberty of a person under trial, has laid down the key factors that have to be considered while granting bail, which are extracted as under:
>
> "7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.
>
> 8. Another relevant factor is as to 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.
>
> 9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find

> whether he has a bad record – particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further about the criminal record of a defendant, is therefore not an exercise in irrelevance."

b) In ***Prahlad Singh Bhati vs. NCT of Delhi & ORS*** **– (2001) 4 SCC 280** this Court highlighted the aspects which are to be considered by a court while dealing with an application seeking bail. The same may be extracted as follows:

> "The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge."

c) This Court in ***Ram Govind Upadhyay vs.***

Sudarshan Singh **– (2002) 3 SCC 598,** speaking through Banerjee, **J.,** emphasized that a court exercising discretion in matters of bail, has to undertake the same judiciously. In highlighting that bail cannot be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows:

> "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. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. 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."

d) In ***Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav & Anr.*** **– (2004) 7 SCC 528**, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, the court is required to indicate the prima facie reasons justifying the grant of bail.

e) In ***Prasanta Kumar Sarkar vs. Ashis Chaterjee*** **- (2010) 14 SCC 496** this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances

under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under:

> "It is trite that this Court does not, normally, interfere with an order 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: (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."

f) Another factor which should guide the courts' decision in deciding a bail application is the period of custody. However, as noted in ***Ash Mohammad vs. Shiv Raj Singh @ Lalla Bahu & Anr. - (2012) 9 SCC 446***, the period of custody has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents of the acused, if any. Further, the circumstances which may justify the grant of bail are to be considered in the larger context of the societal concern involved in releasing an accused, in juxtaposition to individual liberty of the accused seeking bail.

g) In ***Neeru Yadav vs. State of UP & Anr.*** **– (2016) 15 SCC 422,** after referring to a catena of judgments of this Court on the considerations to be placed at balance while deciding to grant bail, observed through Dipak Misra, **J.** (as His Lordship then was) in paragraphs 15 and 18 as under:

> "15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A historysheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.
>
> x x x
>
> 18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order."

h) In ***Anil Kumar Yadav vs. State (NCT of Delhi)*** **– (2018) 12 SCC 129**, this Court, while considering an appeal from an order of cancellation of bail, has spelt out some of the significant considerations of which a

court must be mindful, in deciding whether to grant bail. In doing so, this Court has stated that while it is not possible to prescribe an exhaustive list of considerations which are to guide a court in deciding a bail application, the primary requisite of an order granting bail, is that it should result from judicious exercise of the court's discretion. The findings of this Court have been extracted as under:

> "17. While granting bail, the relevant considerations are: (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court."

i) In ***Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana Makwana (Koli) and Ors.,*** **(2021) 6 SCC 230** this Court after referring to a catena of judgments emphasized on the need and importance of assigning reasons for the grant of bail. This Court categorically observed that a court granting bail could not obviate its duty to apply its judicial mind and indicate reasons as to why bail has been granted or refused. The observations of this Court have been extracted as under:

> "35. 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 of the Code of Criminal Procedure 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. The consent of parties cannot obviate the duty of the High Court to indicate its reasons why it has either granted or refused bail. This is for the reason that the outcome of the application has a significant bearing on the liberty of the Accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest. We must, therefore, disapprove of the manner in which a succession of orders in the present batch of cases has recorded that counsel for the "respective parties do not press for further reasoned order". If this is a euphemism for not recording adequate reasons, this kind of a formula cannot shield the order from judicial scrutiny.

36. Grant of bail Under Section 439 of the Code of Criminal Procedure 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."

j) Recently in ***Bhoopendra Singh vs. State of Rajasthan & Anr. (Criminal Appeal No. 1279 of 2021),*** this Court made observations with respect to the exercise of appellate power to determine whether bail has been granted for valid reasons as distinguished from an application for cancellation of bail. i.e. this Court distinguished between setting aside a perverse order granting bail vis-a-vis cancellation of bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. Quoting ***Mahipal vs. Rajesh Kumar*** **(2020) 2 SCC 118,** this Court observed as under:

> "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."
>
> * * *

l) The most recent judgment of this Court on the aspect of application of mind and requirement of judicious exercise of

discretion in arriving at an order granting bail to the accused is in the case of ***Brijmani Devi vs. Pappu Kumar and Anr.*** **– Criminal Appeal No. 1663/2021** disposed of on 17th December, 2021, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order of the High Court granting bail to the accused, observed as follows:

> "While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a *prima facie* conclusion. While considering an application for grant of bail a *prima facie* conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-a-vis the offence/s alleged against an accused."

15. On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasi-judicial authority, it would be useful to refer to a judgment of this Court in ***Kranti Associates Private Limited & Anr. vs. Masood Ahmed Khan & Ors.*** **– (2010) 9 SCC 496**, wherein after referring to a number of judgments this Court summarised at paragraph 47 the law on the point. The relevant principles for the purpose of this case are extracted as under:

> "(a) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be

done it must also appear to be done as well.

(b) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(c) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(d) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(e) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(f) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(g) Insistence on reason is a requirement for both judicial accountability and transparency.

(h) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(i) Reasons in support of decisions must be cogent, clear and succinct.

> A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.
>
> (j) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision- making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* [(1987) 100 Harvard Law Review 731-37)
>
> (k) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

Though the aforesaid judgment was rendered in the context of a dismissal of a revision petition by a cryptic order by the National Consumer Disputes Redressal Commission, reliance could be placed on the said judgment on the need to give reasons while deciding a matter.

16. The Latin maxim "*cessante ratione legis cessat ipsa lex*" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself", is also apposite.

17. We have extracted the relevant portions of the impugned order above. At the outset, we observe that the extracted portions are the only portions forming part of the "reasoning" of the High court while granting bail. As noted from the aforecited judgments, it is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an

order on an application for grant of bail. However, the Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused.

18. Ultimately, the Court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other.

19. Thus, while elaborate reasons may not be assigned for grant of bail or an extensive discussion of the merits of the case may not be undertaken by the court considering a bail application, an order *de hors* reasoning or bereft of the relevant reasons cannot result in grant of bail. In such a case the prosecution or the informant has a right to assail the order before a higher forum. As noted in ***Gurcharan Singh vs. State (Delhi Admn.)* - 1978 CriLJ 129,** when bail has been granted to an accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking cancellation of bail under section 439 (2) of the CrPC. However, if no new circumstances have cropped up since the grant of bail, the State may prefer an appeal against the order granting bail, on the ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a prima-facie case against the accused.

20. xx xx xx

21. xx xx xx

> **22.** The High Court has lost sight of the aforesaid material aspects of the case and has, by a very cryptic and casual order, *de hors* coherent reasoning, granted bail to the accused. We find that the High Court was not right in allowing the application for bail filed by the respondent-accused. Hence the impugned order dated 7th May, 2020 is set aside. The appeal is allowed."

14. In the light of the judgment passed by the Supreme Court, this Court is of the considered opinion that the bail granted to the respondent cannot be given a stamp of judicial approval.

15. Accordingly, the order dated 05.08.2021 passed by First Addition Sessions Judge, Jaura District Morena in Bail Application No.357/2021 is hereby **set aside.** The bail granted to the respondent is hereby **cancelled.** Respondent is directed to surrender before the Trial Court on or before **21.02.2022.**

(G.S. Ahluwalia)
Judge

Abhi