**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 23rd OF AUGUST, 2022

MISCELLANEOUS CRIMINAL CASE NO. 26249 OF 2022

Between:-

SURESH KUMAR S/O GOLAIYA KUSHWAH, AGED 63 YEARS, R/O AB ROAD, GIRWAI MATA WALI PAHADIYA, GWALIOR (MADHYA PRADESH)

……..APPLICANT

(BY SHRI AMIT LAHOTI - ADVOCATE)

AND

1. **RAJENDRA KUSHWAH S/O SHRI PURAN SINGH KUSHWAH, AGED 54 YEARS, OCCUPATION NIL, R/O HARKOTA SEER, SHEETALA MATA MANDIR KE PASS, TARAGANJ, LASHKAR, GWALIOR (MADHYA PRADESH)**

2. **STATE OF MADHYA PRADESH THROUGH POLICE STATION JANAKGANJ, DISTRICT GWALIOR (MADHYA PRADESH)**

……..RESPONDENTS

(SHRI D.R. SHARMA – SENIOR ADVOCATE WITH SHRI

V.D. SHARMA – ADVOCATE FOR RESPONDENT NO. 1)
(SHRI A.K. NIRANKARI - PUBLIC PROSECUTOR FOR STATE/RESPONDENT NO. 2)

This application coming on for hearing this day, the Court passed the following:

ORDER

This application under Section 439(2) of CrPC has been filed for cancellation of anticipatory bail to the respondent No. 1 granted by the Sessions Court by order dated 29.04.2022 passed in Bail Application No.1129/2022.

2. It is submitted by the counsel for the applicant that respondent No. 1 is the father-in-law of the deceased, whereas the applicant is the father of the deceased. The deceased was married to Nitendra Kushwah on 06.12.2020 and she died under suspicious circumstances by hanging on 07.03.2022, i.e., within 1 year and 4 months of her marriage. There are specific allegations against respondent No. 1 that he was harassing and treating the deceased with cruelty for demand of Rs.3,00,000/-. It is submitted by the counsel for the applicant that this Court had granted anticipatory bail to Jethani of the deceased for the reasons that there was no reason for Jethani to demand of Rs.3,00,000/- thereby instigating her in-laws to give similar treatment to her also. It is submitted that while granting anticipatory bail to Smt. Varsha Singh in M.Cr.C. No.17854/2022, this Court in its order dated 18.04.2022 had specifically referred to the allegations made against respondent No. 1 of demand of Rs.3,00,000/-. However, ignoring all these facts, the Trial Court has granted anticipatory bail to the respondent No. 1 by merely mentioning

that the case of the applicant is identical to that of co-accused Smt. Varsha Singh. It is submitted that it is well established principle of law that the reasons are to be assigned while granting bail and it is not a case of parity.

3. Per contra, the application is vehemently opposed by the counsel for the respondent No. 1. It is submitted that grounds for cancellation of bail are different from the grounds for grant of bail. There is no allegation that respondent No. 1 had misused the liberty granted by the Trial Court. To buttress his contentions, counsel for the respondent No. 1 has relied upon the judgment passed by the Supreme Court in the case of **Dolat Ram and others Vs. State of Haryana** reported in **1995 SCC (Cri) 237** and **Abdul Basit alias Raju and others Vs. Mohd. Abdul Kadir Chaudhary and another** reported in **(2015) 1 SCC (Cri) 257**.

4. Heard the learned counsel for the parties.

5. Before considering the merits of the case, this Court would like to consider the law governing principles of grant of bail. The Supreme Court in the case of **Kamla Devi Vs. State of Rajasthan and another** reported in **(2022) 6 SCC 725** has held as under:-

> **25.** This Court has, on several occasions discussed the factors to be considered by a court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are : (*i*) the seriousness of the offence; (*ii*) the likelihood of the accused fleeing from justice; (*iii*) the impact of release of the accused on the prosecution witnesses; (*iv*) likelihood of the accused tampering with evidence. While such list is not exhaustive, it may be stated that if a court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its

discretion, *vide Gudikanti Narasimhulu* v. *Public Prosecutor* [*GudikantiNarasimhulu* v. *Public Prosecutor*, (1978) 1 SCC 240:1978 SCC (Cri) 115]; *Prahlad Singh Bhati* v. *State (NCT of Delhi)* [*Prahlad Singh Bhati* v. *State (NCT of Delhi)*, (2001) 4 SCC 280 : 2001 SCC (Cri) 674] and *Anil Kumar Yadav* v. *State (NCT of Delhi)* [*Anil Kumar Yadav* v. *State (NCT of Delhi)*, (2018) 12 SCC 129 : (2018) 3 SCC (Cri) 425] .

26. This Court has also ruled that an order granting bail in a mechanical manner, without recording reasons, would suffer from the vice of non-application of mind, rendering it illegal, vide *Ram Govind Upadhyay* v. *Sudarshan Singh* [*Ram Govind Upadhyay* v. *Sudarshan Singh*, (2002) 3 SCC 598 : 2002 SCC (Cri) 688] ; *Kalyan Chandra Sarkar* v. *Rajesh Ranjan* [*Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] ; *Prasanta Kumar Sarkar* v. *Ashis Chatterjee* [*Prasanta Kumar Sarkar* v. *Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] ; *Ramesh Bhavan Rathod* v. *Vishanbhai Hirabhai Makwana* [*Ramesh Bhavan Rathod* v. *Vishanbhai Hirabhai Makwana*, (2021) 6 SCC 230 : (2021) 2 SCC (Cri) 722] and *Brijmani Devi* v. *Pappu Kumar* [*Brijmani Devi* v. *Pappu Kumar*, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170] .

27. Reference may also be had to recent decisions of this very Bench in *Manoj Kumar Khokhar* v. *State of Rajasthan* [*Manoj Kumar Khokhar* v. *State of Rajasthan*, (2022) 3 SCC 501] and *Jaibunisha* v. *Meharban* [*Jaibunisha* v. *Meharban* (2022) 5 SCC 465 : (2022) 2 SCC (Cri) 390] , wherein, on engaging in an elaborate discussion of the case law cited *supra* and after duly acknowledging that liberty of individual is an invaluable right, we have held that an order granting bail to an accused, if passed in a casual and cryptic manner, *dehors* reasoning which would validate the grant of bail, is liable to be set aside by this Court while exercising jurisdiction under Article 136 of

the Constitution of India."

6. The Supreme Court in the case of **Brijmani Devi Vs. Pappu Kumar and another** reported in **(2022) 4 SCC 497** has held as under:-

> "**32.** 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 (P) Ltd.* v. *Masood Ahmed Khan* [*Kranti Associates (P) Ltd.* v. *Masood Ahmed Khan*, (2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] , wherein after referring to a number of judgments this Court summarised at para 47 the law on the point. The relevant principles for the purpose of this case are extracted as under:
>
> **32.1.** 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.
>
> **32.2.** Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
>
> **32.3.** Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
>
> **32.4.** 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.
>
> **32.5.** 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.
>
> **32.6.** 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.

32.7. Insistence on reason is a requirement for both judicial accountability and transparency.

32.8. 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.

32.9. 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.

32.10. 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]

32.11. 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".

7. The Supreme Court in the case of **Jaibunisha Vs. Meharban and another** reported in **(2022) 5 SCC 465** has held as under:-

"**25.** We have extracted the relevant portions of the impugned orders [*Meharban* v. *State of U.P.*, 2020 SCC OnLine All 1858] , [*Jumma* v. *State of U.P.*, 2020 SCC OnLine All 1859] above. At the outset, we find that the extracted portions are the only portions forming part of the "reasoning" of the High court while granting bail. As evident from the judgments of this Court referred to above, a court deciding a bail application cannot grant bail to an accused without having regard to 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.

26. While we are conscious of the fact that 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 may not have been crystallised as such, an order dehors any reasoning whatsoever cannot result in grant of bail. If bail is granted in a casual manner, the prosecution or the informant has a right to assail the order before a higher forum. As noted in *Gurcharan Singh* v. *State (Delhi Admn.)* [*Gurcharan Singh* v. *State (Delhi Admn.)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41] , 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) 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."

8. The Supreme Court in the case of **Manoj Kumar Khokhar Vs. State of Rajasthan and another** reported in **(2022) 3 SCC 501** has held as under:-

"**28.** In *Ramesh Bhavan Rathod* v. *Vishanbhai Hirabhai Makwana* [*Ramesh Bhavan Rathod* v. *Vishanbhai Hirabhai Makwana*, (2021) 6 SCC 230 : (2021) 2 SCC (Cri) 722] this Court after referring to a catena of judgments emphasised 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 : (SCC pp. 251-52, paras 38-39)

> "*38*. … We disapprove of the observations [*Vishanbhai Hirabhai Makwana* v. *State of Gujarat*, 2020 SCC OnLine Guj 2987] 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. 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.

39. Grant of bail under Section 439 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."

29. Recently in *Bhoopendra Singh* v. *State of Rajasthan* [*Bhoopendra Singh* v. *State of Rajasthan*, (2021) 17 SCC 220 : 2021 SCC OnLine SC 1020] , 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-à-vis cancellation of bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. Quoting *Mahipal* v. *Rajesh Kumar* [*Mahipal* v. *Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] , this Court observed as under : (*Mahipal case* [*Mahipal* v. *Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] , SCC p. 125, para 16)

"*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."
>
> **30.** The learned counsel for the respondent-accused has relied upon the decision of this Court in *Myakala Dharmarajam* v. *State of Telangana* [*Myakala Dharmarajam* v. *State of Telangana*, (2020) 2 SCC 743 : (2020) 1 SCC (Cri) 799] to contend that elaborate reasons need not be assigned for the grant of bail. What is of essence is that the record of the case ought to have been perused by the court granting bail. The facts of the said case are that a complaint was lodged against fifteen persons for offences under Sections 148, 120-B, 302 read with Section 149 of the Penal Code, 1860. The accused therein moved an application seeking bail before the Principal Sessions Judge, who, after perusal of the case diary, statements of witnesses and other connected records, released the accused on bail through an order which did not elaborately discuss the material on record. The High Court cancelled [*Bojja Samatha Vijaya* v. *State of Telangana*, 2019 SCC OnLine TS 2259] the bail bond on the ground that the Principal Sessions Judge had not discussed the material on record in the order granting bail.

9. This Court in the case of **Ramadhar Baghel Vs. State of Madhya Pradesh and another** by order dated **14.03.2022** passed in **M.Cr.C. No.58792/2021** has held as under:-

> "**9.** The Supreme Court in the case of **Harjit Singh Vs. Inderpreet Singh *alias* Inder and another (2021 SCC OnLine SC 633)** by order dated **24.08.2021** passed in **Criminal Appeal No.883/2021** has held as under:-
>
> "**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 A*sh 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.
>
> 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:
>
> (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.
>
> (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."

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:
> >
> > (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.

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 caseby-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.
>
> 3. The learned Public Prosecutor and counsel for the complainant have opposed the bail application.
>
> 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:
>
> > "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:
> >
> > (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.
> >
> > (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."

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."

xxx xxx xxx

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.

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.

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.....

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 nonapplication of mind to the seriousness of the crime and circumstances, which ought to have been taken into consideration."

10. The Division Bench of this Court in the case of **Mahesh Pahade Vs. State of Madhya Pradesh** by order dated **18.07.2018** passed in **Criminal Appeal No.933/2014** has held as under:-

"10. On the other hand, learned counsel for the prosecutrix invited our attention to the decisions of the Supreme Court reported as **(1979) 4 SCC 719 (Rattan Singh vs. State of Punjab)**; a Constitutional Bench decision reported as **(1980) 3 SCC 141 (P.S.R. Sadhanantham vs. Arunachalam and another)**; and **(2000) 2 SCC 391 (R. Rathinam vs. State by DSP)**. Learned counsel has placed a heavy reliance upon a decision reported as **(2001) 6 SCC 338 (Puran etc. vs. Rambilas and another etc.)** and a recent decision of the Supreme Court reported as **(2016) 6 SCC 699 (Amanullah and Another vs. State of Bihar and others)**. Learned counsel also relies upon the Declaration of "Basic Principles of Justice of Victim for Crime and Abuse of Power" adopted in 96th plenary meeting of the General Assembly on 29th November 1985. The declaration laid down the following for access to justice and fair treatment to the victims:-

> "4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
>
> 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable

victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims."

19. In **Amanullah's case (supra),** the Court examined the locus standi in a criminal case and held that though it is the duty of the State to get the culprit booked for the offence committed by him but if the State fails in this regard and party having *bona fide* connection with the cause of action cannot be left at the mercy of the State without any option to approach the appellate court for seeking justice. The Court held that the appeal is maintainable preferred by a witness. The Court held as under:-

"19. The term 'locus standi' is a Latin term, the general meaning of which is "place of standing". *Concise Oxford English Dictionary*, 10th Edn., at page 834, defines the term "locus standi" as the right or capacity to bring an action or to

appear in a court. The traditional view of "locus standi" has been that the person who is aggrieved or affected has the standing before the court that is to say he only has a right to move the court for seeking justice. Later, this Court, with justice-oriented approach, relaxed the strict rule with regard to "locus standi", allowing any person from the society not related to the cause of action to approach the court seeking justice for those who could not approach themselves. Now turning our attention towards the criminal trial, which is conducted, largely, by following the procedure laid down in CrPC. Since, offence is considered to be a wrong committed against the society, the prosecution against the accused person is launched by the State. It is the duty of the State to get the culprit booked for the offence committed by him. The focal point, here, is that if the State fails in this regard and the party having bona fide connection with the cause of action, who is aggrieved by the order of the court cannot be left at the mercy of the State and without any option to approach the appellate court for seeking justice.

*** *** ***

24. After considering the case law relied upon by the learned counsel for the appellants as well as the respondents, in the light of the material placed on record, we are of the view that the appellants have locus standi to maintain this appeal. From the material placed on record, it is clear that the appellants have precise connection with the matter at hand and thus, have locus to maintain this appeal. The learned counsel for the appellants has rightly placed reliance upon the Constitution Bench judgment of this Court, namely, *P.S.R Sadhanantham v. Arunachalam, (1980) 3 SCC 141* and other decisions of this Court in *Ramakant Rai v. Madan Rai, (2003) 12 SCC 395, Esher Singh v. State of A.P., (2004) 11 SCC 585, Rama Kant Verma v. State of U.P., (2008) 17 SCC 257*. Further, it is pertinent here to observe that it may not be possible to strictly enumerate as to who all will have locus to maintain an appeal before this Court invoking Article 136 of the Constitution of India, it depends upon the factual matrix of each case, as each case has its unique set of facts. It is clear from the aforementioned case law that the Court should be

liberal in allowing any third party, having bona fide connection with the matter, to maintain the appeal with a view to advance substantial justice. However, this power of allowing a third party to maintain an appeal should be exercised with due care and caution. Persons, unconnected with the matter under consideration or having personal grievance against the accused should be checked. A strict vigilance is required to be maintained in this regard."

20. In **Lachhman Dass vs. Resham Chand Kaler and Another (2018) 3 SCC 187**, an order of granting bail was set aside by the Supreme Court, observing thus:-

"11. Apart from the above, it is also important to note the legal principles governing this case. We make it clear that this case is not an appeal seeking cancellation of bail in any sense rather, this case calls for the legal sustainability of the impugned order granting bail to the accused-respondent herein. The difference between the cancellation of the bail and a legal challenge to an order granting bail for non-consideration of material available on record is a settled proposition. To clarify, there is no ground pleaded herein that a supervening event breaching bail conditions is raised. [*refer to State through C.B.I. vs. Amarmani Tripathi, (2005) 8 SCC 21; Prakash Kadam v. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189*].

12. Having cleared this confusion, we may clarify, though seriously urged by the counsel appearing on behalf of the respondent no.1, that there is no warrant for cancellation of bail as there has been no breach of bail condition, yet such submission is not countenanced under the law."

21. The declaration of basic principles of justice for victims of crime issued by General Assembly of United Nations provides for victim to obtain redress through formal and informal procedures that are expeditious, fair, inexpensive and accessible. Such declaration contemplates that responsiveness of judicial and administrative processes to the needs of victims should be facilitated by informing the victims of their role and the scope, timing and progress of the proceedings including allowing the

views and concerns of the victims to be presented and considered at the appropriate stages of the proceedings where their personal interests are involved. Therefore, though it is the responsibility of the State to bring the accused to law but in such process the actual sufferer of crime cannot be permitted to stay outside the law and to watch the proceedings from hindsight. It will be travesty of justice if the victims of such heinous crime are denied right to address their grievances before the courts of law.

22. The judgment in **Puran's** case **(supra)** arises out of an order passed by the High Court cancelling bail granted by Additional Sessions Judge. The Court has drawn distinction when conditions of bail are being infringed such as interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner or when the cancellation of bail is sought when bail is granted by ignoring material evidence on record or a perverse order granting bail is passed in a heinous crime. Such an order was said to be against the principles of law. That was a case of an offence under Section 498 and 304-B of IPC. The Court noticed that such offences are on the rise and have a very serious impact on the Society. The Court held that concept of setting aside unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts require such cancellation. The Court considered an argument that a third party cannot move a petition for cancellation of bail as the prosecution has not moved for cancellation. The Court held that an application for cancellation of bail is not by a total stranger but by the father of the deceased. Therefore, it was held that powers so vested in the High Court can be invoked either by the State or by an aggrieved party. The said power could also be exercised suo motu by the High Court. In view of the aforesaid judgment, which pertains to era prior to amendment in Section 372 of the Code giving right to a victim to file an appeal against the order of conviction, clearly gives right to the prosecutrix, a victim of heinous crime on her person to approach this Court for cancellation of bail.

10. Thus, from the plain reading of the law laid down by the Supreme

Court, it is clear that apart from consideration of relevant aspects including criminal antecedents of an accused, recording of reason is essential because only the reasons operate as a valid restrain on any possible arbitrary exercise of judicial and quasi judicial or even administrative power and it also ensures that the discretion has been exercised by decision maker on relevant grounds by disregarding extraneous consideration. Although the appreciation of evidence in detail at the stage of bail may not be required, but the order granting bail must necessarily reflect the reasons indicating the application of mind to the relevant facts. If the impugned order is tested on the anvil of the law laid down by the Supreme Court, then it is clear that except by mentioning that the case of the applicant is identical to that of case of co-accused, who has been granted anticipatory bail by this Court, nothing has been considered and referred by the Court below. The concept of parity has been considered in detail by this Court in the case of **Sikandar Singh Narvariya alias Lalu Vs. State of Madhya Pradesh and another by order dated 04.10.2021 passed in Criminal Appeal No.5870/2021** and has held as under:-

> "**14.** Thus it is clear that the co-accused persons were granted bail on the ground that there is no allegation of assaulting the deceased Shyamlal and the only allegations were that they have given incorrect information to police whereas there are specific allegation of assault against the appellant, co-accused Gajendra Singh and Daplu @ Omkar Singh. Thus it is clear that the Sessions Judge, Bhind has completely ignored the factual aspect of the matter. That is not the end of the case.
>
> **15.** It appears that the Sessions Judge, Bhind has also completely ignored the legal aspect of the matter. Whenever a Court grants bail on the ground of parity, then it is always expected that the Court shall determine whether the reasons of

parity are made out or not.

16. The Supreme Court in the case of **Shri Mahadev Meena vs. Praveen Rathore & Anr. by order dated 27/9/2021 passed in Criminal Appeal No.1089/2021** has held as under:

> "13. Having analyzed *prima facie* the circumstances in which the offence was committed and the nature of the allegations, it will be useful to refer to the precedents of this Court governing the grant of bail. A two-judge Bench of this Court in **Ram Govind Upadhyay** v. **Sudharshan Singh** has listed the considerations that govern the grant of bail without attributing an exhaustive character to them. This Court has observed:
>
> > "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:
> >
> > (*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.
> >
> > (*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."

This Court has further elucidated on the power of the court to interfere with an order of 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."

The above principles have been reiterated by a two judge Bench of this Court in **Prasanta Kumar Sarkar** v. **Ashis Chatterjee**:

"9. … 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.

[internal citation omitted]"

In **Ramesh Bhavan Rathod** v. **Vishanbhai Hirabhai Makwana**, a two judge Bench of this Court of which one of us (Justice DY Chandrachud) was a part, has held that the High Court while granting bail must focus on the role of the accused in deciding the aspect of parity. This Court observed:

> "26.…The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law."

14. The High Court ought to have had due regard to the seriousness and gravity of the crime. The deceased was employed with the Intelligence Bureau in New Delhi. The first respondent is an employee of the Anti-Corruption Bureau at Jhalawar. The material which has emerged during the course of investigation cannot simply be ignored or glossed over (as the High Court has done). The first respondent himself being an employee of the Anti-Corruption Bureau at Jhalawar, the likelihood of the evidence being tampered with and of the witnesses being suborned cannot be discounted. At this stage, when the Court is called upon to evaluate whether a case for the grant of bail has been made out, it is inappropriate to enter upon matters which would form the subject of the trial when evidence is adduced by the prosecution. Bail was granted to the co-accused Anita Meena primarily and

substantially on the ground that she had a child of eleven months with her in jail. This cannot be the basis to a claim of parity on the part of the first respondent. The first respondent cannot claim parity with the co-accused since the allegations in the FIR and the material that has emerged from the investigation indicate that a major role has been attributed to him in the murder of the deceased."

Further, the Supreme Court in the case of **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) & Anr.** reported in **(2021) 6 SCC 230** has held as under:

"26. Another aspect of the case which needs emphasis is the manner in which the High Court has applied the principle of parity. By its two orders both dated 21-12-2020 [*Pravinbhai Hirabhai Koli* v. *State of Gujarat*, 2020 SCC OnLine Guj 2986], [*Khetabhai Parbatbhai Makwana* v. *State of Gujarat*, 2020 SCC OnLine Guj 2988] , the High Court granted bail to Pravin Koli (A-10) and Kheta Parbat Koli (A-15). Parity was sought with Sidhdhrajsinh Bhagubha Vaghela (A-13) to whom bail was granted on 22-10-2020 [*Siddhrajsinh Bhagubha Vaghela* v. *State of Gujarat*, 2020 SCC OnLine Guj 2985] on the ground (as the High Court recorded) that he was "assigned similar role of armed with stick (sic)". Again, bail was granted to Vanraj Koli (A-16) on the ground that he was armed with a wooden stick and on the ground that Pravin (A-10), Kheta (A-15) and Sidhdhrajsinh (A-13) who were armed with sticks had been granted bail. The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High

> Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law."
>
> **17.** Thus, it is clear that whenever an accused seeks bail on the ground of parity, then the Court must focus upon the role of the accused. The role played by the aspirant in the incident should be considered in order to find out as to whether the case of the aspirant who is seeking bail is identical to that of the co-accused, who has already been granted bail or not.

11. The aforesaid order has been affirmed by the Supreme Court in **SLP (Cri) No.9149/2021** by order dated **26.11.2021** in the case of **Axay Kumar Dwivedi Vs. State of Madhya Pradesh**.

12. Therefore, it is clear that in order to consider as to whether the case of the accused is on parity with the other co-accused who has been granted anticipatory bail, the Court must consider the allegations made against the applicant and the co-accused. Merely by mentioning that the case of aspirant is identical to that of co-accused who has been granted anticipatory bail would not fulfill the concept of equality. Thus, this Court is of the considered opinion that the anticipatory bail in question has been granted without adhering to the basic principles of law.

13. The next question for consideration is as to whether this Court in exercise of power under Section 439(2) of CrPC can consider the effect as to whether the Court below has granted anticipatory bail after considering all the relevant material or not. The law in this regard is no more *res integra*. The Supreme Court in the case of **Brijmani Devi (supra)** has held as under:-

> **31.** Recently in *Bhoopendra Singh* v. *State of Rajasthan* [*Bhoopendra Singh* v. *State of Rajasthan*, (2021) 17 SCC 220 : 2021 SCC OnLine SC 1020] , this

> Court has observed as under in the matter of exercise of an appellate power to determine whether bail has been granted for valid reasons as distinct from an application for cancellation of bail by quoting *Mahipal* v. *Rajesh Kumar* [*Mahipal* v. *Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] : (*Mahipal case* [*Mahipal* v. *Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] , SCC p. 125, para 16)
>
> > "*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."

14. Whenever a complainant challenges the order granting bail on merits by alleging that the relevant factors have not been taken into consideration, then the said application must be filed before the Higher Court and where the bail order is challenged on the ground that the applicant has misused the liberty, then the application for cancellation of bail would lie before the same Court which had granted bail.

15. The Supreme Court in the case of **Neeru Yadav Vs. State of Uttar Pradesh and another** reported in **(2016) 15 SCC 422** has held as under:

> **5.** At the outset we are obliged to clarify that it is not an appeal seeking cancellation of bail in the strictest sense. It actually calls in question the legal pregnability of the order passed by the High Court. The prayer for cancellation of bail is not sought on the foundation of

> any kind of supervening circumstances or breach of any condition imposed by the High Court. The basic assail is to the manner in which the High Court has exercised its jurisdiction under Section 439 CrPC while admitting the accused to bail. To clarify, if it has failed to take into consideration the relevant material factors, it would make the order absolutely perverse and totally indefensible. That is why there is a difference between cancellation of an order of bail and legal sustainability of an order granting bail. (See *State of U.P.* v. *Amarmani Tripathi* [*State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)], *Puran* v. *Rambilas* [*Puran* v. *Rambilas*, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] , *Narendra K. Amin* v. *State of Gujarat* [*Narendra K. Amin* v. *State of Gujarat*, (2008) 13 SCC 584 : (2009) 3 SCC (Cri) 813] and *Prakash Kadam* v. *Ramprasad Vishwanath Gupta* [*Prakash Kadam* v. *Ramprasad Vishwanath Gupta*, (2011) 6 SCC 189 : (2011) 2 SCC (Cri) 848].
>
> **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 [*Budhpal* v. *State of U.P.*, 2014 SCC OnLine All 14815] .

16. The Supreme Court in the case of **Padmakar Tukaram Bhavnagare and another Vs. State of Maharashtra and another** reported in **(2012) 13 SCC 720** has held as under:-

> "**13.** It is true that this Court has held that 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. This Court has clarified

> that 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 order must be quashed in the interest of justice. [See *Dolat Ram* v. *State of Haryana* [(1995) 1 SCC 349 : 1995 SCC (Cri) 237] and *Dinesh M.N. (S.P.)* v. *State of Gujarat* [(2008) 5 SCC 66 : (2008) 2 SCC (Cri) 508]]. No such case, however, was made out to persuade the learned Single Judge to quash the anticipatory bail order passed in favour of Accused 6 and 7. Order granting anticipatory bail to them, therefore, deserves to be confirmed. We feel that if the conditions imposed by the learned Sessions Judge are confirmed, it would be possible for the investigating agency to interrogate the accused effectively."

17. Counsel for the respondent has relied upon the judgment passed by the Supreme Court in the case of **Abdul Basit alias Raju and others Vs. Mohd. Abdul Kadir Chaudhary and another** reported in **(2014) 10 SCC 754**, in which it has been held as under:-

> **19.** Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court.
>
> **21.** It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting

> bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court.

18. Thus, where the quashment of bail order is sought on the ground that on the basis of material available on record, the bail order is vulnerable, then such application is maintainable provided the same is filed before the Higher Court.

19. Now the question for consideration is as to whether the anticipatory bail order issued in favour of the respondent No. 1 is liable to be quashed or not ?

20. Suresh Kumar Kushwah, father of the deceased has specifically stated that her daughter was married to Nitendra Kushwaha on 06.12.2020 and she was kept properly for a period of 6 months after her marriage. Thereafter her daughter started complaining that her in-laws are demanding money and use to pass taunts. She also complained that her husband used to beat and abuse her. Father-in-law, mother-in-law and elder brother-in-law (*Jeth*) also pass taunts by alleging that a lot of money was spent in the marriage, but the father of the deceased has not given the entire amount which was agreed upon prior to marriage. Her daughter was not allowed to come to her parental home and her in-laws were continuously passing taunts and were harassing her mentally for want of dowry. In the month of November, 2021, he went to the matrimonial house of his daughter along with his wife and son Ramprakash and requested father-in-law that they should not harass her

daughter, then it was replied by father-in-law of the deceased that they would keep the deceased properly only when an amount of Rs.3,00,000/- is paid. Thus, there are specific allegations of demand of dowry by the respondent No. 1 as well as harassment on account of non-fulfillment of demand of dowry.

21. So far as the case of Smt. Varsha Singh (co-accused who was granted anticipatory bail) is concerned, her status is also that of daughter-in-law and this Court after finding that except vague and omnibus allegations, no specific allegations have been made against her and it is well established principle of law that near and dear relatives of the husband should not be compelled to face the ordeal of trial unless and until there are specific allegations against them, coupled with the fact that daughter-in-law by instigating her parents-in-law would invite trouble for herself also, she was granted anticipatory bail. Thus, it is clear that the case of the respondent No. 1 is completely distinguishable from the case of Smt. Varsha Singh who was granted anticipatory bail by this Court. Furthermore, in the light of the judgment passed by the Supreme Court in the case of **Taramani Parakh Vs. State of M.P.** reported in **(2015) 11 SCC 260,** case of the respondent No. 1 is completely distinguishable. Under the facts and circumstances of the case, this Court is of the considered opinion that the respondent No. 1 has been granted anticipatory bail by the Court below without considering the material available on record and the order granting anticipatory bail is completely unreasoned order.

22. Accordingly, the order dated 29.04.2022 passed in Bail Application No.1129/2022 is hereby **set aside.** The respondent No. 1 is

directed to surrender before the Trial Court within a period of 15 days from today, otherwise, the Trial Court shall be free to issue warrants of arrest for securing his appearance.

22. With aforesaid observations, the application is **allowed.**

(G.S. AHLUWALIA)
JUDGE

Abhi