

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. /2026
(@ SLP (CrI). No. 12970/2025)

SARJU PRASAD

.....Petitioner(s)

VERSUS

STATE OF U.P & ANR.

.....Respondent(s)

O R D E R

1. Leave granted.
2. Heard learned counsel for the parties.
3. The present appeal has been filed against the final judgment and order dated 03.09.2024 passed in Criminal Miscellaneous Bail Application No. 9309/2024 passed by the High Court of Judicature at Allahabad, Lucknow Bench whereby the High Court granted regular bail to the Respondent no. 2-accused. The gist of the prosecution case is that an FIR No. 154/14 came to be registered on 17.06.2014 in Crime No. 410/14 under Section 147, 148, 149, 302, 201 and 120 IPC whereunder it was alleged that the informant while proceeding for his morning walk saw smoke rising from a ditch and on inspection he found

that a dead person was found in a burnt condition. On investigation the chargesheet came to be filed after taking note of the fact that the appellant herein, the father of the deceased had filed a complaint on 09.07.2014 about missing of his son and on his identification of the dead body and conducting the further investigation, chargesheet came to be filed.

4. On account of the appellant having absconded there was spit up chargesheet and the remaining accused were proceeded against and after conducting the trial by judgment dated 28.03.2023 the accused persons were convicted for the offences alleged against them. Undisputedly the said convicted persons have carried the judgment of the Sessions Court in appeal and same has been pending before Allahabad High Court whereunder there has been suspension of sentences and bail has been granted to the said accused persons. For 09 long years, the respondent no. 2 was absconding. In spite of permanent Non-bailable warrant issued against him, he has not been traceable and the fact that there was reward issued against him also did not yield result. After great efforts and after State authorities formed a Special Task force, Respondent no. 2 was successfully apprehended in May, 2024 and was taken into custody and the trial has proceeded against him.

5. An application filed by the Respondent no. 2 before the Trial Court for being enlarged on bail which came to be rejected by assigning cogent reasons namely it came to be held that accused-applicant was absconding since 2014; non-bailable warrants had been issued against him; and, a price money for Rs. 50,000/- had been announced for those who give information about his whereabouts, apart from there being criminal history of six cases to the credit of his account. These factors persuaded the Trial Court to reject the application for bail. Being aggrieved by the same, the Respondent no. 2 approached the Jurisdictional High Court and by the impugned order by assigning the following reason the High Court granted the bail:

"7. Considering the fact that the evidence has already come and the conviction judgment of the other co-accused is subject to appeal before this Court in which the appellants have been enlarged on bail coupled with the fact that the criminal history of the applicant is duly explained in the supplementary affidavit in which the applicant is either on bail or has been acquitted, as such, the applicant is entitled to be enlarged on bail. In view thereof, the application is allowed."

6. Questioning the same, the appellant who is the complainant of his missing son is before this Court contending *inter alia* that the High Court completely ignored the material evidence before it and on *ipse dixit* has granted bail. He would also contend that accused has a long and detailed criminal history of 16

cases including the present one and the fact that he was absconding for 09 long years though pleaded and urged before the High Court by the State Public Prosecutor has been brushed aside under the impugned order without assigning any reason whatsoever or in other words on the ground that he has been enlarged on bail on those criminal cases or acquitted in some of them as the reason to grant bail. By relying upon the judgment of this Court in case of "*Mahipal vs. Rajesh Kumar Alias Polia and Another*" reported in (2020) 2 SCC 118, he seeks for the petition being allowed and impugned order being set aside.

7. Per contra, learned senior counsel appearing for Respondent no. 2 vehemently opposing the said prayer and would contend that that this Court while considering the prayer for either examining the prayer for setting aside the order of bail or for cancellation of bail which has already been granted will have to be slow or in other words such prayer has to be considered with utmost circumspection. He would submit that primary factors to be considered while examining such a prayer would be as to whether the accused is at flight risk or he is likely to induce or threaten the prosecution witnesses or likely to delay the trial and in the absence thereof this court should be slow in interfering with the discretionary relief granted by the High Court. He would

also further contend that in the instant case such circumstances has not arisen and mere reason of absconding would not be a ground to deny the liberty enshrined under Article 21 of the Constitution of India. As such he would pray for the appeal being dismissed and in support of his submission, he has relied upon the following judgments:

(i) 2025 SCC Online SC 3035

(ii) 2023 SCC Online SC 1347

(iii) (1995) 1 SCC 349

8. Learned Standing counsel for the Respondent no. 1 - State would support the appellant and would also assail the impugned order contending that the High Court completely erred in ignoring the relevant material, which was available on record and merely because the co-accused who have been tried, convicted and sentenced to life imprisonment having been granted bail by suspending their sentence by the Appellate Court by itself is not a factor which ought to have weighed with the High Court for granting bail in favour of Respondent no. 2. As such he has prayed for the appeal being allowed and the order of bail that passed by the High Court being set aside.

9. Having heard the learned counsels for the parties and after bestowing our careful and anxious consideration to the rival contentions raised at the bar, it would be apt

and apposite to note at this juncture that this Court has outlined the consideration on the basis of which discretion under Section 439 Cr.P.C. has to be exercised while granting bail.

10. In *Gurcharan Singh & Ors vs State (Delhi Administration)* (1978) 1 SCC 118, this Court has held as to the various parameters which was considered while granting bail. It has been held:-

"24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), CrPC against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

11. In fact, the above factors do not constitute an exhaustive list, they are only illustrative, the grant

of bail requires various factors, which ultimately depends upon the specific facts and circumstances of the case; there cannot be any straight jacket formula with a mathematical precision which can be prescribed for grant of bail. What would be the relevant factors, would depend upon the facts and circumstances of the each case which and same will have to be considered, evaluated and weighed by the Jurisdictional Court namely it would relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment and the character, position and standing of the accused vide *State of U.P. through CBI vs. Amarmani Tripathi* [(2005) 8 SCC 21].

12. It is also trite law that once the bail is granted, the Appellate Court usually refuse to interfere with the same as it pertains to liberty of an individual. Constitution Bench of this Court in *Bihar Legal Support Society vs. Chief Justice of India* [(1986) 4 SCC 767] has observed as under:

"3. The question whether special leave petitions against refusal of bail or anticipatory bail should be listed immediately or not is a question within the administrative jurisdiction of the Chief Justice and we cannot give any direction in that behalf. But, we may point out that every petitioner who files a special leave petition against (sic refusal) of bail or anticipatory bail has an opportunity of mentioning his case before the learned Chief Justice in his administrative capacity for urgent listing and wherever a case deserves urgent listing, the Chief Justice makes an appropriate order for urgent listing. It may,

however, be pointed out that this Court was never intended to be a regular court of appeal against orders made by the High Court or the sessions court or the Magistrates. It was created as an Apex Court for the purpose of laying down the law for the entire country and extraordinary jurisdiction for granting special leave was conferred upon it under Article 136 of the Constitution so that it could interfere whenever it found that law was not correctly enunciated by the lower courts or tribunals and it was necessary to pronounce the correct law on the subject. This extraordinary jurisdiction could also be availed by the Apex Court for the purpose of correcting grave miscarriage of justice, but such cases would be exceptional by their very nature. It is not every case where the Apex Court finds that some injustice has been done that it would grant special leave and interfere. That would be convening the Apex Court into a regular court of appeal and moreover, by so doing, the Apex Court would soon be reduced to a position where it will find itself unable to remedy any injustice at all, on account of the tremendous backlog of cases which is bound to accumulate. We must realise that in the vast majority of cases the High Courts must become final even if they are wrong. The Apex Court can also be wrong on occasions but since there is no further appeal, what the Apex Court says is final. That is why one American Judge said of the Supreme Court of the United States: "We are right because we are final: we are not final because we are right". We must, therefore, reconcile ourselves to the idea that like the Apex Court which may be wrong on occasions, the High Courts may also be wrong and it is not every error of the High Court which the Apex Court can possibly correct. We think it would be desirable to set up a National Court of Appeal which would be in a position to entertain appeals by special leave from the decisions of the High Courts and the Tribunals in the country in civil, criminal, revenue and labour cases and so far as the present Apex Court is concerned, it should concern itself only with entertaining cases, involving questions of constitutional law and public law. But until any such policy decision is endorsed by the Government, the Apex Court must interfere only in the limited class of cases where there is a substantial question of law involved which needs to be finally laid at rest by the Apex Court for the entire country or where there is grave, blatant and atrocious miscarriage of justice. Sometimes, we Judges feel that when a case comes before us and we find that injustice has been done, how can we shut our eyes to it. But the answer to this anguished query is that the judges of the Apex Court may not shut their eyes to

injustice but they must equally not keep their eyes too wide open, otherwise the Apex Court would not be able to perform the high and noble role which it was intended to perform according to the faith of the Constitution-makers. It is for this reason that the Apex Court has evolved, as a matter of self-discipline, certain norms to guide it in the exercise of its discretion in cases where special leave petition are filed against orders granting or refusing bail or anticipatory bail. These norms have to be articulated in order that the people may know as to what is the judicial policy of the Apex Court in entertaining such special leave petitions. That would go a long way towards introducing a measure of certainty in judicial response to such special leave petitions and would also tend to reduce the inflow of such special leave petitions. This was the reason why a bench of this Court consisting of two of us viz. the Chief Justice and Justice Ranganath Misra, clearly enunciated in an order made on October 30, 1985 in Special Leave Petition (Criminal) No. 2938 of 1985 that this Court should not "interfere with the orders granting or refusing bail or anticipatory bail" and that "these are matters in which the High Court should normally become the final authority". We reiterate this policy principle laid down by the bench of this Court and hold that this Court should not ordinarily, save in exceptional cases, interfere with orders granting or refusing bail or anticipatory bail, because these are matters in which the High Court should normally be the final arbiter."

13. The above principle has been consistently followed by this Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee*, [2010] 14 SCC 496] and reiterated as follows: -

"9. We are of the opinion that the impugned order is clearly unsustainable. 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.

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 non-application of mind, rendering it to be illegal. In *Masroor* [2009] 14 SCC 286: (2010) 1 SCC (Cri) 1368], a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows: (SCC p. 290, para 13)

"13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for *prima facie* concluding why bail was being granted particularly where the accused is charged of having committed a serious offence."

14. Thus, the Appellate Court or the Higher forum which examines whether the order granting bail suffers from non-application of mind or is not borne out of a *prima facie* view on evidence on record, would be an essential feature. It is thus necessary for this Court to assess whether on the basis of an evidence on record, there exists a *prima facie* case or reasonable ground that the accused has committed the crime also taking in account the seriousness of the crime and the severity of the punishment. It is worth noting that in the instant case what is being considered relates to whether the High Court had exercised the discretionary power under Section 439 in granting bail appropriately or not. Such

an assessment is different from deciding whether circumstances subsequent to the grant of bail have made it necessary to cancel the same. If the twin factors are conspicuously present then in such an event this Court would be required to examine both the factors. The first situation requires to analyze whether the granting of bail is illegal, perverse, unjustified or arbitrary. On the other hand, an application for cancellation of bail looks at whether supervening circumstances have occurred warranting cancellation. In the case of "*Neeru Yadav vs. State of U.P.*". [(2016) 15 SCC 422, this Court has held following:

"12. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* [*Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] , while dealing with the Court's role to interfere with the power of the High Court to grant bail to the accused, the Court observed that it is to be seen that the High Court has exercised this discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a catena of judgments on that point. The Court proceeded to enumerate the factors: (SCC p. 499, para 9)

"9. ... among other circumstances, the factors [which are] 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."

15. Thus, it would be necessary to examine, determine, adjudicate, analyze and answer whether the High Court while granting bail to respondent no. 2 accused has properly exercised its discretion under Section 439 CrPC by following parameters laid down by this Court. In this background we deem it proper to take note of the finding recorded by the learned Trial Court while refusing to grant bail to the Respondent no. 2. The fact that the accused was absconding since 2014, Non-bailable warrant issued against him and price money of Rs. 50,000/- had been announced on him, as well as Respondent no. 2 having 06 criminal history of cases or all factors which cumulatively persuaded the learned Trial judge to refuse the grant the bail or exercise the discretionary power in his favour. As against this finding or the reasoning adopted by the Trial court when compared with the reasoning adopted by the High Court, it can be discerned from the impugned order that the High Court having noticed these factors at para 7 (supra) has purportedly taken note of supplementary affidavit under which the respondent no. 2 has contended that he was either on bail in the earlier cases or has been acquitted in some of the cases to arrive at a conclusion that Applicant (Respondent No.2 herein) was entitled for being released on bail.

16. The severity of the crime alleged to have been committed by the Respondent no. 2, the consequences flowing out of it and the factor that there was warrant issued against him as also reward for disclosing about his whereabouts as he was absconding for 09 long years have been given a complete go by. In the other word the High Court seems to have erred in ignoring the material evidence available on record or conveniently overlooked the same. Yet another factor which cannot go unnoticed is that the fact that the respondent no. 2 subsequent to the impugned order is said to have had a fight with his wife and assaulted her which also resulted in 02 FIRs registered in Crime No. 124/2025 and 47/2025 would disclose his culpable mental state of mind.

17. Mr. Gaurav Bhatia, learned senior counsel appearing for respondent no. 2 has made an strenuous effort to contend that the prosecution lodged against the Respondent no. 2 on account of matrimonial dispute would in no way throw any light to the facts of the present case or in other words it would have no bearing on the present case, though at first blush looks attractive, we are not impressed by the said argument for the simple reason that while granting a bail a condition that would be imposed as has happened in the instant case is to the effect *"the applicant should not commit any of the acts similar to the offence of which he is accused or*

suspected of" which does not mean and include that he should have committed the crime of murder only and it would definitely include any acts whatsoever made either directly or indirectly in this regard is itself a ground to reject the bail. In fact, the complainant in two FIRs which has been subsequently registered is lodged by none other than wife of the Respondent no. 2. As such taking into consideration the fact that the Respondent no. 2 has a colorful history of criminal record and subsequent to the bail granted by the High court he has indulged in a criminal act and not merely there are the chances of such offences being repeated are the factors which have persuaded us to set aside the impugned order. Hence, we allow this Appeal, set aside the impugned order and direct the Respondent no. 2 to surrender within a period of two weeks from today, failing which the authorities would be at liberty to take him into custody. It is also made clear that in the event of recording of the material witnesses is not concluded within a period of 09 months from today, the respondent no. 2 would be at liberty to file a fresh application for grant of bail before the jurisdictional Trial Court and in such an event the trial Court shall consider the application on its own merit and based on the material that would be available and without being influenced by any of the observations made by it earlier or the observation made under the impugned order of the High court or this

order .

18. All pending application(s) are consigned to records.

..... J
(ARAVIND KUMAR)

..... J.
(PRASANNA B. VARALE)

New Delhi,
19th February, 2026

ITEM NO.13

COURT NO.15

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 12970/2025

[Arising out of impugned final judgment and order dated 03-09-2024 in CRMB No. 9309/2024 passed by the High Court of Judicature at Allahabad, Lucknow Bench]

SARJU PRASAD

Petitioner(s)

VERSUS

STATE OF U.P & ANR.

Respondent(s)

IA No. 189856/2025 - EXEMPTION FROM FILING O.T.

Date : 19-02-2026 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARAVIND KUMAR
HON'BLE MR. JUSTICE PRASANNA B. VARALE

For Petitioner(s) Mr. Pradeep Kant, Sr. Adv.
Mr. Abhinav Agrawal, AOR
Mr. Shubham Kumar, Adv.
Mr. Piyush Bhardwaj, Adv.
Mr. Shivam Sengupta, Adv.
Mr. Ketan Priyadarshee, Adv.

For Respondent(s) Mr. Namit Saxena, AOR

Mr. Gaurav Bhatia, Sr. Adv.
Mr. Utkarsh Jaiswal, AOR
Mr. Neelmani Guha, Adv.
Mr. Shivam Wadhwa, Adv.
Mr. Pranshu Dwivedi, Adv.
Mr. Prasanjay J Sahani, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appeal is allowed, in terms of the signed order.
3. Pending application(s), if any, shall stand disposed of.

(KANCHAN CHOUHAN)
SENIOR PERSONAL ASSISTANT

(AVGV RAMU)
COURT MASTER (NSH)

[Signed Order is placed on the file.]