

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 810 of 2024

Manoj Jaiswal @ Manoj Saw @ Manoj Pd. Jaiswal aged about 35 years Son of Surendra Prasad, resident of village-Orsa, P.O.+ P.S.- Mahuadanr, Dist-Latehar

--- --- Appellant

Versus

The State of Jharkhand

--- --- Respondent

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**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR**

For the Appellant : Mr. Nandan Prasad, Advocate
For the Respondent : Mr. Pankaj Kumar, P.P.

Order No.6 / Dated 9th January 2025

The instant appeal filed under Section 21(4) of the National Investigation Agency Act, 2008, is directed against the order dated 28.05.2024 passed in Misc. Cr. Appl. No. 325 of 2024 by the learned Additional Sessions Judge-II, Latehar, whereby and where under prayer for regular bail of the appellant has been rejected for the offence registered under Section under Section 370(4)/34 of the I.P.C in connection with S.T. Case No. 46 of 2024 arising out of Mahuadanr P.S. Case No. 11 of 2023 corresponding to G.R. Case No. 404 of 2023.

2. It has been contended on behalf of the appellant that appellant is languishing in judicial custody since 20.05.2023 and still the trial has not been concluded.

3. It has further been contended on behalf of the appellant that two other co-accused namely Amit Bansal and Virendra Kumar Gupa have been directed to be released on bail by a co-ordinate Bench of this Court in Criminal Appeal (DB) No. 363 of 2024 vide order dated 02.05.2024 and Criminal Appeal (DB) No. 52 of 2024 vide order dated 18.04.2024 respectively.

4. Learned counsel for the appellant, based upon aforesaid

grounds has submitted that it is a fit case where interference is needed in the impugned order.

5. On the other hand, learned P.P. appearing for the State has vehemently opposed the prayer for interfering with the impugned order, reason being that appellant is making a new case of non-conclusion of trial, which point has not been raised before the concerned Court.

6. Further, it has been submitted by the learned counsel for the State that out of 9 charge-sheeted witnesses, 5 witnesses have been examined and the trial is likely to be concluded in the near future.

7. Learned P.P. has further submitted that the cases of the two co-accused, who have been directed to be released on bail by a Coordinate Bench of this Court is different from the case of the appellant, since, against them the allegation was only that they were taking the services of the victims while the allegation against the present appellant is that he is the person instrumental in carrying/trafficking the two children and as such, Principle of Parity cannot be said to be applicable herein. Therefore, taking into consideration the nature of allegation and further one of the victim has not been traced out, it is not a fit case where interference is needed with the impugned order.

8. We have heard the learned counsel for the parties, gone across the findings rendered by the learned Court in the impugned order as also the case diary, based upon the materials so collected during course of investigation.

9. The fact about the custody and the Principle of Parity has been taken as ground for interfering with the impugned order.

10. There is no dispute that the Principle of Parity is made applicable in the matter of bail also but while applying the Principle of Parity the factual aspect and nature of allegation from whom the

parity is sought for needs to be examined.

11. As would appear from the orders of the Court allowing the prayer for bail of the co-accused by quashing the order of the concerned court that the co-accused who were directed to be released on bail were not at all involved in the matter of trafficking attracting the ingredients of the offence under Section 370 of the IPC while against the appellant there is allegation of direct overt act being instrumental in trafficking the two minor victims, one of whom is still traceless.

12. Therefore, the Principle of Parity cannot to be applicable in view of the judgment rendered by the Hon'ble Apex Court in the case of ***Tarun Kumar vs. Assistant Director Directorate of Enforcement, 2023 SCC OnLine SC 1486*** wherein it has been held as under:

“18. The submission of learned Counsel Mr. Luthra to grant bail to the appellant on the ground that the other co-accused who were similarly situated as the appellant, have been granted bail, also cannot be accepted. It may be noted that parity is not the law. While applying the principle of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration.”

13. It is further settled connotation of law that Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail and by only simply saying that another accused has been granted bail is not sufficient to determine whether a case for grant of bail on the basis of parity has been established. Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in ***Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana, (2021) 6 SCC 230*** wherein it has been held as under:

*“25. We are constrained to observe that the orders passed by the High Court granting bail fail to pass muster under the law. They are oblivious to, and innocent of, the nature and gravity of the alleged offences and to the severity of the punishment in the event of conviction. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527], **this Court***

has held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail. This Court observed : (SCC p. 515, para 17)

“17. Coming to the case at hand, it is found that when a stand was taken that the second respondent was a history-sheeter, it was imperative on the part of the High Court to scrutinise every aspect and not capriciously record that the second respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the second respondent has been charge-sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside.”

*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 (A16) 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.”*

14. So far as issue of custody is concerned, as would be evident from the report submitted by the Superintendent of Police, Latehar, out of 9 charge-sheeted witnesses, 5 witnesses have been examined.

15. Considering the gravity of the nature of allegation and out of

two victims, one victim is still traceless and one of the trafficked child who has been recovered has disclosed the name of the present appellant in specific terms and also the fact that the trial is at the fag end, this Court is of the view that this is not a fit case for interfering with the impugned order.

16. Accordingly, the prayer for bail is rejected and consequently the instant criminal appeal is dismissed.

(Sujit Narayan Prasad, J.)

(Navneet Kumar, J.)

A.Mohanty