



2025 INSC 666

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 2573 OF 2025

(@ Special Leave Petition (Crl.) No. 14681 of 2024)

AASHISH YADAV

...APPELLANT(S)

VERSUS

YASHPAL & ORS.

...RESPONDENT(S)

J U D G M E N T

PRASANNA B. VARALE, J.

1. Leave granted
2. The present appeal arises from the Impugned Order dated 23/08/2024 passed by the High Court of Judicature for Rajasthan, Jaipur Bench in Crl. Misc. Bail Application No.6946 of

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2024, wherein the High Court allowed the bail application of the accused respondents on basis of parity observing that the other

two co-accused in the case had already been granted bail on the same set of allegations. Aggrieved by the same, the Petitioner has preferred the present appeal.

3. The brief facts leading to the present appeal are as under-

It is the case of the Prosecution that on 28.11.2023 during a marriage procession, the accused respondents got into a fight with the victim, Aman Yadav, during which one person named Vicky @ Kartoos fired seven rounds of bullets out of which one hit the victim killing him, and the remaining bullets hit two other people, Vikash and Naveen at the procession gravely injuring them. Immediately after, the accused respondents and Vicky @ Kartoos fled the location in a car. Following the incident, FIR No. 489/2023 was registered on 29.11.2023 at Kotkasim Police Station, District Khairthlal, Tijara, Rajasthan under Sections 143, 341, 323, 307, 302 the Indian Penal Code, 1860¹ and Section 3 and 25 of the Arms Act, 1959² wherein it was alleged that in furtherance of an existing enmity with the victim, the accused respondents hired the contract Killer, Vicky @ Kartoos, to kill the victim and that he was killed in a planned and pre-

¹ (hereinafter referred to as 'IPC')

² (hereinafter referred to as 'Arms Act')

meditated manner in the middle of a marriage procession. It is also mentioned in the FIR that Yashpal, Raman and their family had been harbouring a grudge against Aman Yadav ever since an argument took place at a well worship ceremony in the village on 19.11.2023.

4. During Investigation, three eyewitnesses were examined out of which two were injured by the bullets fired. The statements given by all the three eyewitnesses were consistent and converged to confirm the incident. Further, based on the information given by Vickky @ Kartoos in his statement under Section 27 of the Indian Evidence Act, 1872 the pistol/weapon from which shots were fired was recovered from the house of accused respondent No. 1. He also identified the location where the test shots were fired. Chargesheet was filed after completion of the investigation under Sections 341, 323, 307, 302, 120B, 147, 148, 149 of IPC and Sections 3, 25, 5, 27 of Arms Act before the Learned Trial Court on 27.02.2024. The chargesheet kept investigation against the Accused Respondents pending as they were absconding. In the chargesheet reference to the accused respondents was made as absconding accused.

5. On 04.03.2024, one of the co-accused, Kulwant, was granted bail by the High Court observing that the main accused in the matter are Yashpal, Raman and Vicky @ Kartoos. Another co-accused Om Prakash was also granted bail by the High Court on 19.03.2024 on the ground that another co-accused who is not a main accused has been granted bail. Following the two bail orders enlarging bail to the co-accused, the accused respondents moved S.B Criminal Miscellaneous Bail Application No. 4459/2024 and S.B Criminal Miscellaneous Bail Application No.4460/2024 which was dismissed by the High Court vide order dated 29.04.2024 with liberty to surrender before the Ld. Trial Court. Subsequently, the accused respondents surrendered before the Trial Court on 14.5.2024 and were taken into custody.

6. After surrendering, first Bail Application No. 221.2024 was moved by the accused respondents before the Trial Court which was dismissed vide order dt. 29.05.2024. Supplementary chargesheet No. 2 was filed under Sections 341, 323, 307, 302, 120B, 147, 148, 149 of IPC and Sections 3, 25, 5, 27 of Arms Act on 12.08.2024 wherein it was concluded that the accused respondents are the mastermind behind conspiracy to kill the victim.

7. A second Bail Application No. 6946/2024 was moved by the accused respondents before the Rajasthan High Court, Jaipur Bench where the High Court vide order dt. 23.08.2024 allowed the bail applications of the accused respondents observing that -

“5. Considering the arguments put forward by the learned counsel for the petitioners and looking to the fact that injured Vikas and Naveen, in their statements recorded under Section 161 Cr.P.C. have levelled allegations of causing fire arm injuries against Vicky @ Kartoos. The general omnibus allegations have been levelled against the petitioners and the co-accused Sandeep and Om Prakash, whom indulgence of bail has already been granted by this Court. Looking to the fact that the case of the petitioners is of Par with them and they are in custody from the date of their arrest and after investigation, charge-sheet has been filed and trial will take its own time to conclude and without expressing any opinion on merits and demerits of the case, I deem it just and appropriate to grant indulgence of bail to the petitioners under Section 439 Cr.P.C.

6. Accordingly, this bail application under Section 439 Cr.P.C. is allowed and it is ordered that accused- petitioners Yashpal S/o Deepak and Raman S/o Sanjay who are arrested in connection with aforementioned FIR, may be released on bail; provided they both furnishes a personal bond of Rs.50,000/- with two surety bonds of Rs.25,000/- each to the satisfaction of learned trial Court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so.”

8. Aggrieved by the order, the Petitioner has filed the present appeal before us.

Submissions

9. The counsel for the petitioner has contended that the High Court had earlier granted bail to the co-accused Kulwant, Sandeep and Omprakash on the ground that they were not the main accused who are the accused respondents herein. The counsel submitted that the High Court now cannot grant bail to the main accused respondents observing that the co-accused have been granted bail in the matter already. It is submitted that the case of respondents is very different from that of the co-accused. The accused respondents are the mastermind behind the conspiracy to kill the victim and the same is established from the fact that on 19.11.2023 and 20.11.2023 there was serious fight between respondent accused and victim in which respondent accused gave life threats to the victim. It is also submitted that Vicky @ Kartoos is a contract killer/sharpshooter and has numerous cases against him and is a history sheeter wanted in various offences. It is further submitted that the accused respondents were absconding for six months and thus there is real apprehension that enlarging them on bail would lead the accused respondents to abscond again.

10. Per contra, the learned counsel for the respondents have submitted that there has been a delay in filing the FIR and additionally the complainant is not an eyewitness to the incident either. It is submitted that the statements of the eyewitnesses only indicate that it was a case of sudden fight and was not a planned conspiracy against anyone. The counsel has further submitted that there is no material on record to show and establish common intention of formation of unlawful assembly by the accused respondents.

Analysis

11. We have heard Learned Counsel for the appellant as well as Ld. Counsel for the respondent. We have also perused relevant documents on record and the judgment passed by the High Court.

12. We do not find any merit in the submission made on behalf of the accused respondents whose bail application was allowed holding that no material against the accused person is available and there is nothing on record to show that the accused respondents actively participated in the act of firing the bullet.

13. We are of the opinion that the contention that there is no material to the effect to indicate that they were involved in hatching the conspiracy is an aspect to be considered by the court by conducting a full-fledged trial. Sufficient material is available on record to show that these two accused engaged the contract killer Vicky @ Kartoos to kill Aman. Even as per the FIR, it is mentioned that Vicky @ Kartoos is a sharp shooter who used a firearm to fire bullets during the marriage procession wherein one victim namely Aman died, and two others namely Vikas and Naveen were gravely injured whose witness statement has also been recorded.

14. The submission of the respondents that the accused persons were only involved in a case of sudden fight cannot be accepted as the FIR clearly states that the accused were waiting for some reason so that the hired contract killer could get an opportunity to shoot the victim. As per the FIR, the sharpshooter Vicky @ Kartoos and other persons were dancing in the marriage procession when on a trifle issue they suddenly picked a quarrel with the victim and the contract killer Vicky @ Kartoos immediately fired. Also, material on record reveals that before

shooting the victim, the contract killer also conducted a trial shoot by firing his pistol into the air.

15. On the contrary, we find considerable merit in the submissions of learned counsel for the appellant that the High Court committed a serious error in holding and observing that the case of the respondents is at par with the case of other co-accused namely Sandeep and Omprakash. In so far as, the order granting bail to accused Omprakash is concerned, it was observed in the order dated 19.03.2024 by the learned Judge, that specific allegations have been assigned to co-accused Yasphal, Raman and Vicky @ Kartoos. Another consideration was the age of Omprakash wherein the submission advanced before the learned Judge in respect of the age of Omprakash was accepted and it was observed that the petitioner i.e. Omprakash is an old infirm person of 84 years of age.

16. It can also safely be said that merely because no overt act was attributed to the respondent accused in the First Information Report the same cannot be the sole consideration for grant of bail to these respondents in a serious offence under Section 302 of IPC. Time and again, it is observed by this Court that First

Information Report is not an encyclopaedia of facts. An FIR is a starter point to set the investigation in motion and subsequently, the investigating agency collects the necessary material in the course of investigation so as to unearth the real offenders. In the present case also, in the course of investigation, the material collected by the investigating agency suggested that the respondent accused persons hatched a conspiracy so as to eliminate the victim and engaged a contract killer Vicky @ Kartoos to kill the victim Aman. We are unable to accept the submission of the learned counsel for the respondents that it was a sudden fight in the marriage procession that led to opening of firearm and shooting the victim. The material collected by the investigating agency in the form of statement of witnesses show that the respondent accused who have engaged a contract killer Vicky @ Kartoos were waiting for an opportune time so that they can use the hired contract killer to eliminate victim Aman.

17. It is also reflected from the material, that before the actual incident of shooting victim Aman, the contract killer Vicky @ Kartoos had opened the firearm for a test firing. The sequence of events at the incident show that the marriage procession started and some of the young boys started dancing in the procession.

Aman was also amongst them and while dancing the accused respondent got into an argument with victim Aman and his friends. Using this quarrel as an opportunity and as per the plan hatched by the respondents, the contract killer Vicky @ Kartoos by using the firearm i.e. pistol, shot victim Aman, resulting in his death and two other persons, Vikash and Naveen were also injured. Their statements were also recorded by the investigating agency. The investigating agency was successful in recovering the weapon pistol from respondent no. 1. Admittedly, from the day of arrest till filing of the first chargesheet wherein these respondent accused were shown as absconding, the respondents were successful in evading their arrest and subsequently when the application for grant of bail was rejected these respondents accused surrendered themselves to the Trial Court and then the application for grant of bail was filed before the High Court.

18. It was also submitted before the Court that the contract killer Vicky @ Kartoos is having criminal antecedents and is a history sheeter. Thus, the apprehension of the complainant, that the respondent accused, if released on bail may pressurise the witnesses is not unjustified.

19. The complainant is also justified in making the submission that as the trial is now in the process and key prosecution witnesses are yet to be examined, there exists a reasonable apprehension that if these accused persons are granted bail, then they may attempt to pressurise or influence the witnesses or even abscond.

20. The High Court therefore failed to consider these above grounds and has mechanically passed the order and allowed the appeal. The order of grant of bail to accused on parity is error apparent on the face of the record. The High Court failed to consider that the accused are the main accused in the matter and cannot be enlarged on bail because the other co-accused persons have been granted bail. The High Court order granting bail to the accused respondents is hereby set aside. Accordingly, the present appeal is allowed.

21. The respondents are directed to surrender themselves to the concerned authority not later than two weeks from today.

22. Observations, in this judgment are only for the purpose of setting aside the bail order. The Trial Court is directed to decide

the matter on its own merits, uninfluenced by the observations in this judgment.

23. Pending application(s), if any, shall stand disposed of.

.....J.
[K.V. VISWANATHAN]

.....J.
[PRASANNA B. VARALE]

**NEW DELHI;
MAY 13, 2025.**