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CASE COMMENT: APARNA BHAT & ORS. VERSUS STATE OF MADHYA PRADESH & ANR (2021) SCC 230

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ABSTRACT

A case commentary of APARNA BHAT & ORS V. STATE OF MADHYA PRADESH & ANR, which the Honourable Supreme Court determined on March 18, 2021 is presented in the current paper. The Supreme Court pronounced its ruling in the matter following a Special Leave Petition under Article 136 of the Constitution. Justices A.M. Khanwilkar and S. Ravindra Bhat presided over the hearing, while J. Ravindra Bhat wrote the verdict. The appellants had filed an appeal to challenge a portion of the Madhya Pradesh High Court's ruling that imposed certain bail conditions in a case involving sexual offence against a woman. The petitioners requested the Court's involvement and urged it to give *directives or guidelines on bail and anticipatory bail* to ensure that courts impose only legal conditions. In addition, the apex court was encouraged to provide *directives about the gender sensitization of the bar and the bench*, particularly in terms of judicial empathy for the prosecutrix.

INTRODUCTION

In *Vikram V. State of Madhya Pradesh (MCRC-23350-2020)* the Madhya Pradesh High Court, in granting bail to the accused under Section 439 of the Code of Criminal Procedure, 1973 (CrPC), stipulated many conditions, one of which was challenged by the Petitioner Aparna Bhat (an advocate) and eight other lawyers. In the case in question, the hon'ble Supreme Court determined that the condition was arbitrary and, therefore, invalidated it. It also laid down a number of guidelines for the Courts to follow while granting bail in sexual offences.

In an unprecedented order, the Apex court discussed elaborately about the trauma of survivors of sexual offences, and how the courts have to be sensitive while also being unprejudiced in dealing with such cases. It also laid a list of gender stereotypes which should be avoided in judicial orders.

FACTS

The facts of the case can be summarized as:

1. As per the prosecution story in *Vikram v. State of M.P.*, on April 20, 2020, at around 2.30 a.m, the accused as a neighbour had entered the house of the complainant and caught hold of her hand attempting to outrage her modesty.
2. For the offences punishable under Sections 452, 354A, 323 and 506 of the Indian Penal Code 1860 (hereinafter referred to as the 'IPC'), Crime number 133/2020 was subsequently reported at Police station, Bhatpachlana, District – Ujjain.
3. The accused submitted a request for anticipatory bail under Section 439 of the Code of Criminal Procedure, 1973. The following *condition* was placed by the High Court while granting bail to the applicant and was challenged in the Special Leave Petition (SLP):

On August 3, 2020, at 11:00 a.m., the applicant and his wife will go to Sarda Bai's home with a basket of sweets and a Rakhi thread or band. They will ask Sarda Bai to tie the band to him while promising to protect her to the best of his ability in the future. As part of a customary ceremony that is typically performed by brothers to sisters on such occasions, he will also give the complainant Rs. 11,000 and ask for her blessing. The applicant must also give Vishal, the complainant's child, Rs. 5,000 to buy him clothes and candy. Photographs and receipts for payments given to the complainant and her son must be obtained by the applicant, who must then file them with the registry through the counsel. The aforementioned amount deposit is merely for the enlargement of the applicant on bail and will have no bearing on the ongoing trial.

ISSUES

1. The major issue was how are the expressions “*in the interest of justice*”, “*such other conditions court considers necessary*” and “*as it may think fit*” as provided in the bare text of the Section 437(3)(c) as well as Section 438(2)(iv) of the CrPC , 1973 to be

construed? What kind of conditions can the courts impose while granting bail to an accused under the aforementioned provisions?

2. Another issue in the case was whether bail conditions can mandate acts such as '*Rakhi tying*', requiring tendering of apology, rendering community service or presenting a gift to the survivor or even promising to marry her, as the case may be.
3. Further the court also addressed the remarks made by various Trial Courts and High Courts in a plethora of cases, on the survivor's conduct in rape and sexual assault cases.

THE CONTENTIONS OF THE APPELLANTS:

1. The appellants claimed that the words "in the interest of justice," "such other conditions court considers necessary," and "as it may think fit", which can be found in the plain text of Sections 437(3)(c) and 438(2)(iv) of the CrPC, give the courts discretion to impose additional conditions that may be necessary given the facts of a particular case. However, those conditions must be consistent with other conditions in the provisions, the purpose of granting bail, and no other consideration.
2. The appellants also emphasized that the impugned decision placed a requirement on the applicant's receipt of bail that he or she visit the complainant's home. The appellants argued that this was unacceptable and that no condition or observation should be set that would allow the accused to interact with the survivor and her family.

CONTENTIONS OF THE INTERVENORS

1. A request in favour of the appeal was also preferred by several intervenors. The Intervenor's counsel claimed that by employing the wording "**any condition**," in sections 437(2) and 438 (CrPC) the power to impose conditions were conveyed in extremely broad terms. Recently, in granting bail under these sections, High Courts have begun to impose extraneous stipulations. The intervenors have attached **about twenty-three orders** in which these bail requirements were imposed.
2. The intervenors further argued that the court cannot take the role of social reformer or charity fund-raiser when assessing a bail application and cannot impose conditions that have no connection to the offence or relation to the purpose of the bail provisions.

SUBMISSIONS BY THE ATTORNEY GENERAL

1. The Court had issued notice to the Attorney General in this matter, who also made his submissions in this matter. The learned Attorney General submitted a lengthy memorandum outlining the procedures that should be taken to sensitize all parties, particularly the courts, while addressing crimes against women. He also submitted a list of additional considerations that should be kept in mind while dealing with crimes against women.
2. On gender equality and gender sensitivity, the Attorney General emphasized that for gender justice to be achieved, judicial officers, judges, and members of the bar must be made aware of gender stereotypes that impede justice.

PREVIOUS RULINGS

While deciding the petition, the SC referred to the following precedents in the matter :

1. In **Kunal Kumar Tiwari v. State of Bihar**¹, the Supreme court while dealing with Section 437(3)(c), Cr. PC (general conditions of bail) observed as follows:

“9. There is no dispute that Sub-clause (c) of Section 437(3) allows Courts to impose such conditions in the interest of justice. We are aware that palpably such wordings are capable of accepting broader meaning. But such conditions cannot be arbitrary, fanciful or extend beyond the ends of the provision. The phrase 'interest of justice' as used under the Sub-clause (c) of Section 437(3) means "good administration of justice" or "advancing the trial process" and inclusion of broader meaning should be shunned because of purposive interpretation.”

2. In **Sumit Mehta v. State (NCT of Delhi)**² it was held While granting relief in accordance with Section 438(1), suitable conditions may be imposed pursuant to Section 438(2) to ensure that an investigation continues uninterrupted. The purpose of imposing such constraints should be to prevent the individual from interfering with the investigation. Thus, any condition that has no bearing on the fairness or appropriateness of the investigation or trial cannot be permitted under the law. Therefore, the Court's discretion in imposing conditions must be exercised with the utmost caution.

¹ (2018) 16 SCC 74

² (2013) 15 SCC 570

3. In **Ramphal V. State of Haryana**³ The court acknowledged the compromise between the survivor and the accused, but determined that such an agreement is irrelevant when resolving rape and sexual assault cases.

JUDGMENT

a) **On Conditions of Bail**

While referring to its previous judgment viz **Kunal Kumar Tiwari V. state of Bihar** the Court held that - **In the interest of justice, Subclause (c) of Section 437(3) clearly permits courts to impose such limitations. Such phrasing is obviously capable of accommodating a broader meaning. Nonetheless, these criteria cannot be arbitrary, imaginative, or stretch beyond the provisions' limits.**

b) **On Compromise in Sexual offences**

The court also recognized the appellants' argument that in cases of sexual offences, the concept of compromise, notably in the form of marriage between the accused and the prosecutrix, shall not be considered, as any such attempt would be an affront to the dignity of the woman.

It said that utilizing *Rakhi* tying as a bail condition transforms a molester into a brother by court order. This is completely unethical and has the consequence of diluting and undermining the sexual harassment offence. The act committed against the survivor constitutes a criminal offence and cannot be repaired by an apology, community service, tying a *Rakhi* or offering a gift to the survivor, or even vowing to marry her, depending on the circumstances.

The legislation criminalizes the violation of a woman's modesty. By granting bail under such terms, the court risks being accused of renegotiating and mediating justice between opposing parties in a criminal case and reinforcing gender stereotypes.

c) **On remarks about Victim's/Survivor's Conduct**

The court ruled that the use of reasoning/language that minimizes the offence and seeks to trivialize the survivor must be avoided in all circumstances. It laid out a list of conduct, actions, or situations that are to be deemed irrelevant, e.g., to say that the survivor had previously consented to such or similar acts, or that she behaved

³ CrI. A. No. 438/2011decided on 27.11.2019

promiscuously, or by her actions or clothing, provoked the alleged action of the accused, that she behaved in a manner unbecoming of chaste or "Indian" women, or that she had provoked the situation by her behaviour, etc.

The court also said these incidents are merely examples of an attitude that should never be reflected in judicial verdicts or orders or deemed relevant when reaching a judicial determination; they cannot serve as justifications for providing bail or other similar relief.

d) **Directions**

The Supreme Court directed that:

- Conditions of bail should not dictate, compel, or allow contact between the accused and the victim. These criteria should safeguard the complainant from additional harassment by the accused;
- If the court has reason to believe that the victim is at risk of being harassed, or if the victim expresses fear, after requesting police reports, the court shall separately consider the nature of protection and issue an appropriate order, in addition to directing the accused not to make contact with the victim.
- In all instances where bail is granted, the complainant must be notified immediately and given a copy of the bail order within two days.
- Bail conditions and orders shall closely adhere to the provisions of the Cr. PC and avoid expressing stereotypical or patriarchal conceptions about women and their status in society. In other words, consideration of the prosecutrix's attire, conduct, or past "conduct" or "morals" should not be included in the verdict granting bail.
- While adjudicating cases involving gender-related crimes, the courts should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any other form of compromise, as it is beyond their powers and jurisdiction;
- Judges should demonstrate sensitivity at all times, ensuring that the prosecutrix is not traumatized by the proceedings or anything said during the arguments; and
- Judges should not use any words, spoken or written, that would undermine or shake the survivor's confidence in the court's fairness or impartiality.

e) **On Sensitization of Legal Community**

The court mandated that a module on gender sensitization be included as part of the fundamental training of every judge. This curriculum must try to teach judges how to be more sympathetic while hearing and deciding sexual assault cases, as well as eliminate persistent social bias, particularly misogyny.

The court requested the National Judicial Academy to quickly develop the necessary inputs that must be incorporated into the training of young judges and the continuing education of judges with regard to gender sensitization, including adequate awareness programmes regarding stereotyping and unconscious biases that can infiltrate judicial reasoning.

f) **Final order**

Bail conditions in the impugned judgment set aside and expunged from the record.

IMPORTANCE

The decision in the Aparna Bhat case recognizes the entrenched paternalism and misogyny that are sometimes reflected in judicial orders. In addition, it takes into account offensive remarks and gender stereotyping made by judges in situations involving sexual offences. It discusses and emphasizes in length that such remarks are completely undesirable and have the potential to inflict great harm to the prosecutrix and society.

In addition, the judgement established certain requirements for judicial orders. The ruling was the first of its kind to address gender sensitivity in the legal community, including the bar and the bench. The case discussed elaborately, the greater role of judges in society. At all levels, judges play a crucial role as educators and thought leaders. It is their responsibility to remain unbiased at all times, especially in cases involving crimes against women. If they falter, they endanger justice and inflict great cruelty on the hopelessness of survivors.

The judgment will prove to be a torchbearer for courts to follow in the future when dealing with victims of sexual assault. By discussing the faults of a patriarchal culture, it has set an example for its enormous audience. This will go down in history as a significant step towards the emancipation of women.