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(2021) ALLMR(Cri) 4330 : (2022) 3 BomCR(Cri) 162 : (2022) 1 CgLJ
366 : (2021) 4 Crimes 139 : (2021) 282 DLT 497 : (2021) 4 GujLH
218 : (2021) 4 LawHearld(SC) 2840 : (2021) 3 MadWN(Cri) 171 :
(2021) 2 OriLawRev 981 : (2021) 4 RCR(Criminal) 421 : (2021) 10
SCC 773 : (2022) 1 SCC(Cri) 153

SUPREME COURT OF INDIA

DIVISION BENCH

(Before : Sanjay Kishan Kaul and M.M. Sundresh, JJ.)

SATENDER KUMAR ANTIL – Appellant

Vs.

**CENTRAL BUREAU OF INVESTIGATION AND ANOTHER
– Respondent**

Petition(s) for Special Leave to Appeal (Crl.) No(s). 5191 of 2021 (Arising
Out of impugned final judgment and order dated 01-07-2021 in CRMABA
No. 7598 of 2021 passed by the High Court of Judicature at Allahabad)

Decided on : 07-10-2021

**Criminal Procedure Code, 1973 (CrPC) - Section 439 -
Granting bail after filing of charge sheet - Not arrested
during investigation - Cooperated throughout in the
investigation including appearing before Investigating
Officer - whenever called - Guidelines:**

"Categories/Types of Offences

**A) Offences punishable with imprisonment of 7 years or
less not falling in category B & D.**

**B) Offences punishable with death, imprisonment for life,
or imprisonment for more than 7 years.**

**C) Offences punishable under Special Acts containing
stringent provisions for bail like NDPS (S.37), PMLA
(S.45), UAPA (S.43D(5), Companies Act, 212(6), etc.**

D) Economic offences not covered by Special Acts.

CATEGORY A

After filing of chargesheet/complaint taking of cognizance

**a) Ordinary summons at the 1st instance/including
permitting appearance through Lawyer.**

b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.

c) NBW on failure to failure to appear despite issuance of Bailable Warrant.

d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

e) Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORY B/D

On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Category B & D with the additional condition of compliance of the provisions of Bail uner NDPS S. 37, 45 PMLA, 212(6) Companies Act 43d(5) of UAPA, POSCO etc.

Held:-

Needless to say that the category A deals with both police cases and complaint cases.

The trial Courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications - Caveat which has been put by learned ASG is that where the accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit.

Cases Referred

- Siddharth Vs. State of UP, 2021 SCC online SC 615
- Sanjay Chandra vs. CBI, (2012) 1 SCC 40

Counsel for Appearing Parties

Mr. Sidharth Luthra, Sr. Advocate, Mr. Akbar Siddique, Advocate, Mr. Rajneesh Chuni, Advocate, Mr. Malik Javed Ansari, Advocate, Mr. Chirag Madan, Advocate, Mr. Hardik Rupal, Advocate, Mr. Parv Garg, Advocate, Mr. Adeel Talib, Advocate, Mr. Fareed Siddiqui, Advocate, Mr. Shashank Gaurav, Advocate, for the Appellant; Mr. S.V. Raju, Ld. ASG, Ms. Sairica Raju, Advocate, Mr. Annam Venkatesh, Advocate, Ms. Priyanka Das, Advocate, Mr. Udai Khanna, Advocate, Mr. Arvind Kumar Sharma, Advocate, Mr. Vikram Chaudhary, Sr. Advocate, Mr. Mahesh Agarwal, Advocate, Mr. Pranjal Krishna, Advocate, Mr. E.C. Agrawala, Advocate, Mr. Vikram Chaudhri, Sr. Advocate, Mr. Harshit Sethi, Advocate, Mr. Keshavam Chaudhri, Advocate, Ms. Anzu. K. Varkey, Advocate, Ms. Ria Khanna, Advocate, Mr. Kapil Dahiya, Advocate, for the Respondent.

ORDER

1. Application for intervention is allowed.
2. We have been provided assistance both by Mr. S.V. Raju, learned Additional Solicitor General and Mr. Sidharth Luthra, learned senior counsel and there is broad unanimity in terms of the suggestions made by learned ASG. In terms of the suggestions, the offences have been categorized and guidelines are sought to be laid down for grant of bail, without fettering the discretion of the courts concerned and keeping in mind the statutory provisions.
3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the Courts below. The guidelines are as under :

"Categories/Types of Offences

- A) Offences punishable with imprisonment of 7 years or less not falling in category B & D.
- B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.
- C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S. 43D (5), Companies Act, 212(6), etc.
- D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

- 1) Not arrested during investigation.
- 2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.

(No need to forward such an accused along with the chargesheet
(**Siddharth Vs. State of UP, 2021 SCC online SC 615**)

CATEGORY A

After filing of chargesheet/complaint taking of cognizance

a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.

b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.

c) NBW on failure to failure to appear despite issuance of Bailable Warrant.

d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

e) Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORY B/D

On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Category B & D with the additional condition of compliance of the provisions of Bail under NDPS S. 37, 45 PMLA, 212(6) Companies Act 43 d(5) of UAPA, POSCO etc."

4. Needless to say that the category A deals with both police cases and complaint cases.

5. The trial Courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by learned ASG is that where the accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

6. We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial Court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.

7. The suggestions of learned ASG which we have adopted have categorized a separate set of offences as "economic Offences" not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in **Sanjay Chandra vs. CBI, (2012) 1 SCC 40** has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

- a) seriousness of the charge and
- b) severity of punishment.

8. Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.

9. We appreciate the assistance given by the learned counsels and the positive approach adopted by the learned ASG.

10. The SLP stands disposed of and the matter need not be listed further.

11. A copy of this order be circulated to the Registrars of the different High Courts to be further circulated to the trial Courts so that the unnecessary bail matters do not come up to this Court.

12. This is the only purpose for which we have issued these guidelines, but they are not fettered on the powers of the Courts.

13. Pending applications stand disposed of.