Chander Alias Chandra Vs. State of U.P.

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Court : Allahabad

Decided On : Dec-12-1997

Reported in : 1998CriLJ2374

Judge : G.P. Mathur and ;Kundan Singh, JJ.

Acts : Evidence Act - Sections 40 to 44 and 403; Code of Civil Procedure (CPC) - Sections 11 - Order 20, Rule 4(2) - Order 41, Rule 31; Indian Penal Code (IPC) - Sections 147, 148, 161, 302 and 323 ; Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 300, 354, 387, 403(2), 437(1) and 439(1); Constitution of India - Articles 14 and 226

Appeal No. : Crl. Misc. Bail Appln. No. 13532 of 1996

Appellant : Chander Alias Chandra

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : C.P. Upadhyay and ;V.P. Srivastava, Advs.

Judgement :

G.P. Mathur, J.

1. This matter has come before us on a reference made by a learned single Judge. The relevant part of the referring order reads as under:

A perusal of the first information report shows that a brutal murder has been committed. First chilli powder was put into the eyes of the deceased Rajesh and then the applicant and others dragged him and stabbed him several times. This version in the first information report is also corroborated by the post mortem report which shows large number of stabbing and incised wounds on vital parts.

Learned counsel for the applicant has stated that Hon'ble S. N. Tewari, J. by order dated 21 -8-96 has granted bail to co-accused Shankar whose case is on the same footing. With profound respect, I cannot agree with the order of my learned brother. In my opinion this is a case of a brutal murder and since the application is directly involved, it is not a fit case for bail...

2. After noticing the submission made on behalf of the applicant that an accused is entitled to bail if a co-accused similarly placed has been granted bail, the learned Judge has formulated the following questions for decision :

Let the papers of this case be laid before Hon'ble The Chief Justice for constituting a larger Bench to lay down guidelines as to what should be done in a case like this where bail has been granted to a co-accused, and whether in the present case (1) the bail application of the applicant should be rejected although bail has been granted to a co-acused whose case is on the same footing (2) whether bail granted to the co-accused should be cancelled.

3. Sri V.P. Srivastava, learned Counsel for the applicant, has submitted that if an accused is granted bail a similarly placed co-accused should also be granted bail on the principle of parity. He has further submitted that not granting bail to a similarly placed co-accused would amount to discrimination and would violate his fundamental right guaranteeed under Article 14 of the Constitution. The contention based on Article 14 does not impress us. In Naresh v. State of Maharashtra AIR 1967 SC 1, a decision rendered by a Bench of nine Judges, Chief Justice Gajendra Gadkar after referring to Parbhani Transport Co-operative Society Ltd. v. Regional Transport Authority AIR 1960 SC 801, observed as follows in para 48 of

the reports:.It is clear that the observations made by this Court in this case unambiguously indicate that it would be inappropriate to suggest that the decision rendered by a judicial tribunal can be described as offending Article 14 at all. It may be a right or wrong decision and if it is a wrong decision it can be corrected by appeal or revision as may be a permitted by law, but it cannot be said per se to contravene Article 14....

This authoritative pronouncement shows that Article 14 can have no application to judicial orders and a similarly placed co-accused cannot make any grievance on that account.

4. Whether an accused can claim bail on the ground of parity has been considered by several decisions of our Court. A Full Bench in Sunder Lal v. State 1983 Cri LJ 736 did not accept this proposition which will be evident from the following observations in para 15 of the reports

The learned single Judge since has referred the while case for decision by the Full Bench we called upon the learned Counsel for the applicant to argue the case on merits. The learned Counsel only pointed out that by reasons of fact that other co-accused has been admitted to bail the applicant should also be granted bail. This argument alone would not be sufficient for admitting the applicant to bail who is involved in a triple murder case....

This question was again examined by a Division Bench in Nanha v. State 1993 Cri LJ 938, where after consideration of several earlier decisions on the point including Sunder Lal (supra) the learned Judges constituting the Bench gave separate opinions. G.D. Dube, J. held as follows in para 24 of the reports :.My answer to the points referred to us is that parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent bail applications when the bail application of the co-accused whose bail application had been earlier rejected are allowed and co-accused is released on bail. Even then the Court has to satisfy itself that, on consideration of more materials placed, further developments in the investigations or otherwise and other different considerations, there are sufficient grounds for releasing the applicant on bail. If on examination of a given case, it transpires that the case of the applicant before the Court is

identically similar to the accused on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail.

Virendra Saran, J. held as follows in para 61 of the reports :

My answer to the points referred to is that if on examination of a given case it transpires that the ease of the applicant before Court is identical, similar to the accused, on facts and circumstances, who has been bailed out, then the desirability of consistency will require that such an accused should also be released on bail. (Exceptional cases as discussed above apart)....

This shows that there was no unanimity between the two Judges constituting the Bench and according to G.D. Dube, J. parity cannot be the sole ground for granting bail to a co-accused.

5. The applicant claims bail on the ground of party as co-accused Shanker had been granted bail on 21-8-96 by S. N. Tewari, J. in a IInd Bail Application. His first Bail application had been rejected by V.N. Mehrota on 19-12-1994. The order granting bail has some bearing on the controversy raised and therefore it is being reproduced below :

Heard.

Let the applicant Shanker be enlarged on bail in case crime No. 311 of 1994 under Sections 147/323/148 and 302, I.P.C., P. S. Kotwali, District Meerut, on his furnishing two reliable sureties and a personal bond each in the like amount to the satisfaction of C.J.M. Meerut, during the pendency of trial in the Court below.

6. We would, however, like to consider one important aspect of the problem which has not been taken notice of in the decided cases cited before us and that is whether parity can be claimed on the basis of an order which contains absolutely no reasons.

7. The Parliament has enacted Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) and Code of Civil Procedure (hereinafter referred to as C.P.C.) which

lay down exhaustively and in minute details, the entire procedure which has to be followed by courts of law in criminal cases and civil cases respectively right from the beginning till the conclusion of the trial and also in appeals and revisions which may be filed against the judgments and orders passed during the course of proceedings. Section 354, Cr.P.C. lays down that every judgment in every trial in any criminal court of original jurisdiction shall contain point or points for determination, the decision thereon and the reasons for the decision. Section 387 lays down that the rules contained in Chapter XXVII as to the judgment of criminal court of original jurisdiction shall apply so far as it may be practicable to the judgment in appeal of a Court of Sessions which means that points for determination, the decision thereon and the reasons for the decision have to be given. Order 20, Rule 4(2), C.P.C. lays down that judgment shall contain a concise statement of the case, points for determination, the decision thereon and the reasons for such decision. Order 41, Rule 31 lays down that judgment of the Appellate Court shall be in writing and shall state (a) points for determination; (b) decision thereon; (c) reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which appellant is entitled. The Law therefore enjoins that while deciding judicial matters reasons must be given.

8. At this stage, it will be useful to notice the law on the point with regard to decisions by Administrative Authorities. So far as the position in United States is concerned, the law appears to be well settled. In Phelps Dodge Corporation v. National Labour Relations Board (1940) 85 Law Ed 1271 at p. 1284 it was held that administrative process will best be vindicated by clarity in its exercise. In Securities and Exchange Commission v. Chenery Corporation (1942) 87 Law Ed 626 at p. 636 it was held that the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review and That the orderly functioning of the process of review requires that the grounds upon which the administrative agencies acted by clearly disclosed and adequately sustained. In John T. Dunlop v. Walter Bachowski (1975) 44 Law Ed 2d 377, it has been observed that the statement of reasons promote thought by the authority and compels it to cover the relevant points and eschew irrelevancies and assures careful administrative consideration. The courts have always insisted upon recording of reasons for its decision by an Administrative Authority on the premise

that the authority should give clear indication that it has exercised the discretion with which it had been empowered. In England the position is slightly different. However in Breen v. Amalgamated Engineering Union (1971) 2 QB 175 Lord Denning has observed 'the giving of reasons is one of the fundamentals of good administration.' In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120, Sir John Donaldson, as president of the National Industrial Relations Court observed 'failure to give reasons amounts to a denial of justice.' In Regina v. Imigration Appeal Tribunal 1983 QB 790 Lord Lane, C.J. observed 'A party appearing before a tribunal is entitled to know either expressly stated by the tribunal or inferentially stated, what it is to which the tribunal is addressing its mind.

9. In India the matter was considered by the Law Commission in the 14th Report relating to reform in Judicial Administration. The Law Commission recommended :

In the case of administrative decisions provisions should be made that they should be accompanied by reasons. The reasons will make it possibile to test the validity of these decisions by the machinery of appropriate writs. (Vol. II p. 694).

10. This question has been considered by the Apex Court in several cases. In Madhya Pradesh Industries Ltd. v. Union of India AIR 1966 SC 671 at 674, it was held as follows :.If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one....

In Siemens Engineering and Manufacturing Co. of India Limited v. Union of India AIR 1976 SC 1785 it was held as follows at page 1789 :.It is now settled law that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons.

It is not unnecessary to multiply the authorities which have settled the law in our country that even administrative authorities while passing quasi-judicial orders must give reasons.

11. According to Blackstone public wrongs are a breach and violation of public rights and duties which affect the whole community considered as a community, and are distinguished by the harsher appellation of crimes and misdemeanours. A crime then is an act deemed by law to be harmful to society in general, even though its immediate victim is an individual, murder injuries primarily the particular victim; but its blatant disregard of human life puts it beyond a matter of mere compensation between the murderer and the victim's family. Those who commit such acts, if convicted, may be punished. (See Salmond on Jurisprudence, Twelfth Ed 1966, page 91). An order on the bail application, therefore, affects three parties namely the accused, the victim and persons near and dear to him and the State. Any criminal act is a crime against the entire society which is represented by the State. This has assumed greater significance with the increase in gravity and seriousness of crime. Every member of society is interested and is entitled to to know the reasons why an accused has been granted bail. An order granting bail is a judicial order and if the same is not supported with reasons it cannot be considered to be a valid order nor will repose confidence in the judicial system in the mind of the public.

12. The sheet anchor of an accused claiming bail on the ground of parity is an earlier order passed by a court in the same case in favour of a co-accused as this is the very foundation of his right to seek bail. It is, therefore, necessary to examine the relevancy or admissibility of an earlier judgment or order. Sections 40 to 44 of the Evidence Act deal with relevancy of judgments of Courts of Justice. Section 40 provides that existence of any judgment, order or decree which by law prevents any Courts from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Courts are to take cognizance of such suit or to hold such trial. Section 41 makes judgments in probate, matrimonial admirality or insolvency jurisdiction relevant in certain situation. Section 42 makes judgments relevant if they relate to matters of a public nature relevant to the enquiry. Section 11 C.P.C. defines res judicata and lays down the conditions

under which a court is precluded from trying any suit or issue. It is important to note that it is a finding in a suit decided earlier which creates a bar of res judicata and not the decree. This question was considered by a Full Bench of five Judges in Jai Narain v. Bulaqi Das AIR 1969 All 504 : 1968 All LJ 1047. In this case two cross suits were consolidated and disposed of by one judgment and two decrees were prepared. The appeal was filed against one decree by which suit was dismissed but. not against the other decree by which the suit was decreed. The contention that no appeal having been preferred against one decree, the appeal against the other decree was barred by res judicata was repelled on the ground that the bar of res judicata was created by the finding in the judgment and not by the decree and said judgment having been challenged in appeal, the bar would not apply. Therefore what is relevant is finding recorded after consideration of evidence and not the operative portion of the order on the basis of which a decree is drawn. In criminal cases, the principle of issue estoppel applies which is based upon Section 300, Cr.P.C. (Section 403 of Act V of 1898). The principle underlying the section was explained by a Constitution Bench in Manipur Administration v. Bira Singh AIR 1965 SC 87 : 1965 (1) Cri LJ 120 in which it is held as under (at p. 90 of AIR) :.The rule of issue estoppel in a criminal trial is that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or district offence, but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 403(2)....

13. This shows that the bar is created by a finding. The bar of res judicata has been held applicable to writ petitions filed under Article 226 of the Constitution. However, if a writ petition is dismissed summarily without giving reasons, the bar would not apply which would be clear from the following observation of a Constitution Bench of Apex Court in Daryao v. State of U.P. AIR 1961 SC 1457 (para 19)..if the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata....

What we want to emphasis is that the law recognises only a speaking order of a finding which are in fact reasons in support of the order and they only give a right to the party to claim that the proceedings which have attained finality should not be reopened. A fortiorari an accused claiming bail on the ground of parity can do so only on the basis of an order which contains reasons. The order dated 21-8-96 by which Shanker co-accused was granted bail in a second bail application contains no reasons. In fact, it is merely an operative portion of the order.

14. At this stage we would like to point put the hazards in accepting a non-speaking bail order as the basis for granting bail to a co-accused on the ground of parity. In a bail application filed in this Court, uncertified copies of all the documents like F.I.R., injury reports, post mortem report and statement of witnesses under Section 161, Cr.P.C. etc. are annexed along with an affidavit. There can be either an accidental or deliberate mistake in the copies which have been filed. Instances are not wanting where in the copies filed the role of the accused or the weapon with which he was armed found to be totally different from the real one and the copies of injury reports and post mortem reports gave an all together different picture. No one is present on behalf of the State to personally brief the State Counsel and he has to oppose the bail application on the basis of instructions which have been sent by post from the concerned police station. These are written in Hindi by a constable or Head Constable of the police station who may not understand the real import of the averments made in the affidavit filed in support of the bail application which are normally in English. The State Counsel invariably gets the file when the case is taken up for hearing and he hardly gets time to study the brief. Sometimes the instructions are not received and the State Counsel has to argue on the basis of copies supplied by the counsel for the accused without any verification about their correctness or of the averments made in the affidavit. On account of frequent chances and uncertainty of tenure good counsel are also reluctant to work as State Counsel on the criminal side. A Judge has to deal with a very large number of bail applications and gets very little time to properly scrutinise all the material. We have mentioned these facts on the basis of our experience of more than three decades (as member of the Bar and then as a Judge) in this Court. In such a situation, an order of bail being passed either on misreading of evidence, which may be due to filing of incorrct copies of

the documents or otherwise, or on misconception of facts cannot be entirely ruled out. An order giving reasons will disclose whether any error has crept in and if so would not form the basis for a claim of bail on the ground of parity.

15. At this stage, we may consider what is the meaning of the word 'reason'. The dictionary meaning of the word 'reason' is as under:

Whartons Law Lexicon :- the very life of law, for when the reason of a law once ceases, the law itself generally ceases, because reason is the foundation of all our laws. The Law Lexicon by P. Ramanath Aiyar :-A statement of some fact (real or alleged) employed as an argument to justify or condemn some act, prove or disprove some assertion, idea or belief, a ground or cause of or for some thing.

Webster's Third New International Dictionary :-

An expression or statement offered as an explanation of a belief or assertion or as a justification of an act or procedure, a general principle, law or warranted presumption that supports a conclusion, explains a fact or validates a course of conduct; the thing that makes some fact intelligible. Reason can mean, in common, a point or set of related points offered or offerable in support of something disputed.

Chambers Dictionary :-

Ground support or justification for an act or belief.

The New Lexicon Webster's Dictionary :-

The cause that makes a phenomenon intelligible.

16. In Union of India v. M.L. Capoor AIR 1974 SC 87 : 1974 Lab 1C 338 it was observed as follows in para 28 of the reports:.Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be mainfestly just and reasonable.

In the context of bail application reasons do not mean a detail discussion of the evidence or a finding being recorded on every point. Even if the contention which is accepted for granting bail is noticed it will amount to reasons as they will disclose how the mind was applied to the subject matter for arriving at a decision to grant bail. If factors which weighed with the Court in granting bail are clearly indicated even by noticing the submission of the accused it will be enough as the same would indicate the ground on which the bail was granted.

17. There are many advantages of giving reasons as indicated earlier. Reasons promote thought by the decision making authority and compel him to cover the relevant points and eschew irrelevancies and assures careful and proper consideration of the matter. As observed by the Apex Court, giving of reasons acts as an effective restraint on the abuse of power and a deterrent against possible arbitrary action. Normally a speaking order will be a reasonable one and at worst at least a plausible one. If an accused is able to procure bail on the basis of wrong or incorrect documents the error committed in granting bail can be corrected as the complainant or the State can always apply for cancellation of bail. If a bail order is obtained on the basis of incorrect documents and the same does not contain reasons it will not be possible to detect the mischief played and no applications for cancellation of bail can be moved, thus enabling the accused to continue to enjoy the advantages of the fraud committed by him. The argument that a bail order containing reasons may prejudice the trial does not impress us. It is well settled that orders passed on interim applications even by superior Court have no bearing on the main case. In the State of U. P., a civil Judge (Senior Division) has jurisdiction to try suits of unlimited valuation and against the orders passed by him on interlocutory applications like grant of injunction or appointment of a receiver, appeals are filed in the High Court which are disposed of by detailed and lengthy judgments. But it is never contended that while disposing of the appeals, the High Court should not give detail judgments as it may prejudice the final decision of the suit. A Sessions Judge is very senior and experienced judicial officer and he is expected to know this elementary principle.

18. The role assigned to an accused, the weapon with which he was armed and the nature of the injuries inflicted to the victim by themselves are often not

sufficient to find out whether the case of the applicant is similar to a co-accused who has been granted bail. The Court may take into consideration a variety of factors to grant bail to an accused like a plea of alibi which may be peculiar to him, his physical incapacity to take part in the crime, his age, health or any other humanatarian factor which may not necessarily be associated with him but may be connected with his family members. The accused can produce material which may cast doubt on his participation in the crime even though the prosecution evidence may implicate him equally with some other accused and the Court placing reliance on such material extend him the benefit of bail. It is reasons alone which can show which factor weighed with the Court in granting bail. What we want to emphasis is best illustrated by the case of hand. The applicant claims bail on the ground of parity with the order dated 21-8-96 which Shanker co-accused was granted bail by S. N. Tewari, J. in a Second bail application. The first bail application of Shanker was rejected by V. N. Mehrotra, J. on 19-12-94. He filed a second bail application on 26-2-96 and subsequently a supplementary affidavit was filed which was sworn on 4-7-96. In this supplementary affidavit copies of affidavits filed by Daya Shanker (father of the deceased and the complainant) and Vijay (brother of the deceased) filed by them before third Addl. Sessions Judge, Meerut were annexed. In these affidavits it is stated that they had not seen Shanker assaulting the deceased and his name had been wrongly mentioned in the F.I.R. on account of inadvertence. It is further stated in the affidavits that the applicant-Chander and seven other persons who had been named were the real assailants and they had assaulted the deceased. If the father and the brother of the deceased give an affidavit that a particular accused was not present, it is certainly an important point and a Court may grant bail to him on that ground. The order dated 21 -8-96 does not give any reasons but it does appear that Shanker was granted bail taking into consideration the affidavits filed by the father and the brother of the deceased who had clearly exonerated him. From the record, it appears to be the only new ground which had come into existence after the rejection of the first bail application. If the applicant-Chander is granted bail only on the ground of parity with Shanker-accused, it will be clearly illegal as the factors which are likely to have weighed with the Court while granting bail to Shanker are not present in his case. On the contrary, both the father and the brother of the deceased have made the applicant

as a real accused in the affidavits filed by them. It is, therefore, clear that failure of justice may be occasioned if bail is granted to an accused on the basis of parity with another co-accused whose bail order does not contain any reason.

19. The next question which requires consideration is whether bail must necessarily be granted on the ground of parity if the order granting bail to an accused contained reasons. The principles on which bail can be granted have been laid down in a catena of decisions by the Apex Court. In Gurcharan Singh v. State AIR 1978 SC 179 : 1978 Cri LJ 129 it was held as follows in para 24 of the reports :.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), Cr.P.C. 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; are repeating the offence; of jeopadising his own life being faced with a grim prospect of possible conviction in the case of tempering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out.

In Babu Singh v. State of U.P. AIR 1978 SC 527 : 1978 Cri LJ 651 it was held as follows in para 16 of the reports :

Thus the legal principle and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals it is part of the criminological history that a thoughtless bail order has enabled bailee to exploit the opportunity to inflict further crimes on the members of the society. Bail discretion, on the basis of evidence about the criminal record of a defendant is, therefore, not an exercise in irrelevance.

The grant of bail is no doubt discretionary but as said by Lord Mansfield in Tinglay v. Dolbev 14 NW 146 discretion when applied to a Court of justice, means sound

discretion guided by law. It must be governed by rule, not by humours it must not be arbitrary, vague and fanciful, but legal and regular. Therefore if bail has been granted in flagrant violation of well settled principles, the order granting bail would not be in accordance with law. Such an order can never form the basis for a claim founded on parity. In this connection it will be useful to notice the observation made by the Apex Court where the claim was made on the ground that a similar order had been passed by a Statutory authority in favour of another person. In Chandigarh Administration v. Jagjit Singh AIR 1995 SC 705, it was held as follows in para 8 of the reports;.If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal and unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authorky to repeat the illegality or to pass another unwarranted order..The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law-but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. .Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law.

Again in Secretary Jaipur Development Authority v. Daulatmal Jain 1997 (1) SCC 35 it was observed as follows in para 24 of the reports :

Article 14 proceeds on the premises that a citizen had legal and valid right enforceable at law and persons having similar right and persons similarly cicumstanced, cannot be denied of the benefit thereof. Such persons cannot be discriminated to deny the same benefit. The rational relationship and legal back up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously No.

The grant of bail is not a mechanical act and principle of consistency cannot be extended to repeating a wrong order. If the order granting bail to an identically placed co-accused has been passed in flagrant violation of well settled principle it will be open to the Judge to reject the bail application of the applicant before him as no Judge is obliged to pass orders against his conscience merely to maintain consistency.

20. Coming to the second question as to what should be done by a Judge when he is confronted with an order of bail which has been passed in flagrant violation of well settled principles, we are of the opinion that he has no authority to cancel the same as one Judge of the High Court cannot sit in appeal over the orders passed by another Judge. If he considers it in the interest of justice, he may, after expressing his views, refer the matter to the same Judge who had granted bail for appropriate action. However, it appear that the bail order has been passed on the basis of wrong or incorrect documents or wrong facts he may initiate action for cancellation of bail.

21. Our answers to the questions referred are as follows :

1. If the order granting bail to an accused is not supported by reasons, the same cannot form the basis for granting bail to a co-accused on the ground of parity.

2. A judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains reasons, if the same has been passed in flagrant violation of well settled principle and ignores to take into consideration the relevant factors essential for granting bail.-

3. A Judge hearing bail application of one accused cannot cancel the bail granted to a co-accused by another Judge on the ground that the same had been granted in flagrant violation of well settled principles. If he considers it necessary in the interest of justice, he may, after expressing his views, refer the matter to the Judge who had granted bail, for appropriate orders.

4. If it appears that a bail order has been passed in favour of an accused on the basis of wrong or incorrect documents it is open to any Judge to initiate action for cancellation of bail.