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CASE COMMENT: APARNA BHAT & ORS. V. STATE OF MADHYA PRADESH & ANR. AIR 2021 SC 1492

-ASMAA BARWELKAR

1. INTRODUCTION

The Supreme Court of India delivered a landmark judgment in *Aparna Bhat & Ors. v. State of Madhya Pradesh & Anr.* on 18th March, 2021, by a bench comprising Justice S. Ravindra Bhat and Justice A.M. Khanwilkar. It laid down limits on the court's discretion in imposing irrelevant or illegal bail conditions in cases relating to sexual assault and rape. In this case, the Madhya Pradesh High Court (Indore Bench) gave the condition that the accused, charged with sexual harassment, as his bail condition had to get Rakhi tied by the complainant herself on the day of Raksha Bandhan, symbolising a sibling bond between them. The imposition of such conditions, rooted in gender-based stereotypes rather than principled legal reasoning, trivialize the survivor's trauma and dignity.

2. BRIEF FACTS OF THE CASE

In the case of *Vikram v. State of M.P.* On April 20, 2020, Vikram (the accused) allegedly committed house trespass and sexually harassed his neighbour. Accordingly, police registered an FIR in Crime No. 133/2020 at Police Station Bhatpachlana, District Ujjain, for offences punishable under Sections 452, 354(A), 323, and 506 of the Indian Penal Code (IPC)¹. A charge sheet was filed against him, and the accused moved to the Madhya Pradesh High Court Under Section 438 of the Code of Criminal Procedure (CrPC)². The High Court imposed an unusual bail condition that the accused and his wife visit Sarda Bai (the complainant) on Raksha Bandhan, present sweets, request her

¹ The Indian Penal Code, 1860, §§ 323, 354A, 452, 506.

² The Code of Criminal Procedure, 1973, § 438.

tie a Rakhi on him, and pay ₹11,000 to the complainant and ₹5000 to her son as customary gifts. The Court ordered proof of compliance via photographs and directed that receipts be filed with the Registry. This specific bail condition formed the subject of challenge before the Supreme Court, the appeal was filed by nine women advocates, led by Senior Adv. Aparna Bhat.³

3. ISSUES OF THE CASE

- i) Whether the Madhya Pradesh High Court exceeded its statutory jurisdiction under Sections 437(3)(c) and 438(2)(iv) of the Code of Criminal Procedure, 1973, by imposing a Rakhi-tying ritual as a bail condition?
- ii) Whether requiring contact between the parties or treating compromise/marriage as a condition or ground for bail is legally permissible under Sections 437(3) and 438 of the CrPC in cases involving sexual offences?
- iii) Whether bail conditions based on gender stereotypes violate the survivor's dignity under Article 21 of the Constitution?

4. PRECEDENT CITED

- Kunal Kumar Tiwari @ Kunal Kumar v. State of Bihar & Anr. (2017): Bail conditions passed by the courts must be in the interest of justice in securing the objectives like the accused's presence during trial, prevention of tampering of the evidence, and intimidation of witnesses. Such conditions must not be arbitrary or extend beyond legal provisions. The appellants cited this case to highlight judicial overreach in mandating custom-based rituals, i.e., Rakhi tying falls outside the scope of the statutory purpose of bail conditions.⁴
- Sumit Mehta v. State of N.C.T. of Delhi (2013): Establishes that the bail conditions must not hamper the administration of justice in conducting a fair trial, maintaining a balance between an individual's freedom and police investigative rights. Cited to reinforce that ordering an accused to interact with the victim under the guise of a bail condition compromises the trial's fairness.⁵

³ *Aparna Bhat v. State of M.P.*, AIR 2021 SC 1492: (2021) 16 SCC 179, ¶ 3.

⁴ *Kunal Kumar Tiwari @ Kunal Kumar v. State of Bihar & Anr.* (2018) 16 SCC 74 (citing *Id.* ¶ 26).

⁵ *Sumit Mehta v. State of NCT of Delhi* (2013) 15 SCC 570 (citing *Aparna Bhat*, (2021) 16 SCC at ¶ 27).

- *State of Madhya Pradesh v. Madanlal* (2015): Laid down the legal principle that in cases involving sexual offences, the concept of compromise or settlement, especially in the form of marriage between the accused and the prosecutrix, is illegal and offensive to the victim's dignity and bodily integrity. This principle was extended in the *Aparna Bhat* case, from 'marriage compromises' to also include establishing a 'symbolic familial bond' like Rakhi-tying. That forces the victim to accept the accused as her 'brother' or 'protector' that ridicules the gravity of the crime committed and enforces a fictional relation between them based on gender-based stereotypes rather than on a legal framework.⁶
- *Ramphal V. State of Haryana and Anr.* (2019): Noted that financial compensation or mutual compromise holds no legal relevance in determining the guilt of the accused in cases of rape and sexual assault. Cited to direct monetary compensation, i.e., to pay ₹11,000 as a customary gift, and facilitating reconciliation as grounds for bail are illegal and reduce the nature of a serious criminal offence to one of civil wrong.⁷

5. RATIO DECIDENDI

The bail condition regarding sexual offences cannot order any form of contact, reconciliation or compromise between the accused and the victim. Whether it be established through a symbolic sibling bond by Rakhi tying, community service, giving charity, or marriage, such circumstances subject the victim to further trauma and treat offences against women as an insignificant matter that otherwise should have been handled with gender sensitivity and proper application of law. Courts must exercise their powers under sections 437 and 438 of CrPC⁸ within the limits of securing accused presence at trials and preventing interference with the investigation. The conditions that go beyond the limits, particularly those that are rooted in patriarchal assumptions, societal prejudices, and gender-based stereotypes, e.g., questioning women about their chastity, thinking they are incapable of making decisions, always in need of protection, they often overreact or dramatize things, etc. also infringes fundamental rights of victims guaranteed under Art. 21 and 14 of the Constitution.

⁶ *State of Madhya Pradesh v. Madanlal*, (2015) 7 SCC 681 (citing *Aparna Bhat*, (2021) 16 SCC at ¶ 28).

⁷ *Ramphal v. State of Haryana*, (2020) 2 SCC 122 (citing *Aparna Bhat*, (2021) 16 SCC at ¶ 29).

⁸ The Code of Criminal Procedure, 1973, §§ 437, 438.

6. JUDGMENT AND DIRECTIONS

The Supreme Court set aside and expunged the Rakhi-tying condition imposed by the Madhya Pradesh High Court, holding it entirely impermissible. While addressing the wider problem of judicial stereotyping, referring to the tendency of courts to decide or reason based on preconceived or generalized notions about women rather than established legal principles. The Supreme Court also directed judges and lawyers against using language in court that diminishes the offence, questions the victim's past sexual conduct, or reflects patriarchal assumptions, since their conduct in court carries not only the responsibility of an individual's case but also has a significant role in shaping public opinion. Having disposed of the appeal, the Court issued the following directions to operate until statutory or administrative guidelines are framed:

(a) Bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should seek to protect the complainant from any further harassment by the accused;

(b) Where circumstances exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made, in addition to a direction to the accused not to make any contact with the victim;

(c) In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days;

(d) Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the Cr. PC. In other words, discussion about the dress, behavior, or past "conduct" or "morals" of the prosecutrix, should not enter the verdict granting bail;

(e) The courts, while adjudicating cases involving gender related crimes, 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 form of compromise, as it is beyond their powers and jurisdiction;

(f) Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix during the proceedings, or anything said during the arguments, and

(g) Judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court.

Also mandated the National Judicial Academy to run programmes on gender stereotypes and fair trial rights, the Bar Council of India must add topics of 'gender sensitization' in the law degree curriculum, and directed High Courts to create modules on judicial sensitivity to sexual offences, to be tested in the Judicial Service Examinations.⁹

7. CONCLUSION

In conclusion, this landmark judgment provides a forward-looking approach that aligns India's criminal proceedings with gender sensitivity rather than judicial stereotyping. By striking down inappropriate bail conditions and mandates discussion and awareness on 'gender sensitization' and 'judicial sensitivity' for all lawyers and judges. It upholds public trust in the judiciary to protect constitutional rights and dignity of the survivors of sexual offences, free from patriarchal bias or symbolic compromises.

⁹ *Aparna Bhat*, (2021) 16 SCC 179 ¶¶ 44-51

8. REFERENCES

- *Aparna Bhat v. State of M.P.*, AIR 2021 SC 1492: (2021) 16 SCC 179
- *Kunal Kumar Tiwari v. State of Bihar & Anr.* (2018) 16 SCC 74
- *Sumit Mehta v. State of NCT of Delhi* (2013) 15 SCC 570
- *State of Madhya Pradesh v. Madanlal*, (2015) 7 SCC 681
- *Ramphal v. State of Haryana*, (2020) 2 SCC 122
- The Indian Penal Code, 1860, §§ 323, 354A, 452, 506.
- The Code of Criminal Procedure, 1973, §§ 437, 438.