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SLP(Crl.)No. 688 OF 2004
ITEM No.33

Court No. 8

SECTION II
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 688/2004

(From the judgement and order dated 05/12/2003 in CRLA 2324/2003
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

RAJ KUMAR

Petitioner (s)

VERSUS

MUNESH & ANR.

Respondent (s)

(With appln(s). for stay)

Date : 07/07/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL
HON'BLE MR. JUSTICE H.K. SEMA

For Petitioner (s)Mr. Sudhir Nandrajog, Adv.

For Respondent (s)
No. 1Mr. P.K. Jain, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties.

Leave granted.

The appeal is, accordingly, allowed, impugned order is set aside and the respondent, who, as stated by the learned counsel appearing on behalf of the respondent, is still in custody, shall remain in custody during the pendency of appeal before the High Court and shall not be released on bail by any court on any ground whatsoever. However, in case any compelling ground is made out for grant of bail, it would be open to the respondent to move this Court for modification of this order. It is made clear that if it is found that the respondent is not in custody, the concerned Superintendent of Police shall see that he is taken into custody forthwith and the matter shall be reported to this Court within one month from today. Needless to say that any observation made in this order shall not affect case of the respondent in the appeal which is pending before the Allahabad High Court.

[Alka Dudeja] [Om Prakash]
Court Master

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 631 OF 2004
[Arising out of SLP (Crl.) No. 688 of 2004]

Raj Kumar?Appellant

Vs.

Munesh & Anr.?Respondents

O R D E R

Heard the learned counsel for the parties.

Leave granted.

This appeal has been preferred against the order dated 5th December, 2003 passed by the Allahabad High Court in Criminal Appeal No. 2324 of 2003 whereby, during the pendency of the said appeal, Respondent No. 1 (hereinafter referred to as 'the respondent') has been released on bail. The respondent was convicted by trial court under Section 302 of the Indian Penal Code (for short 'IPC') and sentenced to undergo imprisonment for life. The allegation against the respondent was that he was the shooter of the deceased. It has been submitted on behalf of the State that the prosecution case has been supported by the postmortem report and evidence of two persons, who claimed to be the eye-witnesses in the case upon whose testimonies trial court has placed reliance, as such, the High Court should not have granted bail to the respondent. The learned counsel appearing on behalf of the respondent submitted that in exercise of powers under Article 136 of the Constitution of India, this Court should not interfere with the impugned order granting bail.

Ordinarily, in appeal against conviction under Section 302 IPC bail is not granted to the main assailant or the sole assailant unless there are compelling reasons for grant of bail, such as, the judgment rendered by the trial court is so perverse that there is every chance of acquittal and no chance of maintaining conviction of the accused. In the present case, neither from the impugned order it appears nor learned counsel appearing on behalf of the respondent is in a position to satisfy us that the case of the respondent fell within the aforesaid category.

This being the position, we are of the view that the High Court was not at all justified in granting bail to the respondent, which order is shocking to our conscience. The appeal is, accordingly, allowed, impugned order is set aside and the respondent, who, as stated by the learned counsel appearing on behalf of the respondent, is still in custody, shall remain in custody during the pendency of appeal before the High Court and shall not be released on bail by any court on any ground whatsoever. However, in case any compelling ground is made out for grant of bail, it would be open to the respondent to move this Court for modification of this order. It is made clear that if it is found that the respondent is not in custody, the concerned Superintendent of Police shall see that he is taken into custody forthwith and the matter shall be reported to this Court within one month from today. Needless to say that any observation made in this order shall not affect case of the respondent in the appeal which is pending before the Allahabad High Court.

??????????J.

[B.N. AGRAWAL]

??????????J.

[H.K. SEMA]

New Delhi,

July 7, 2004.