

ITEM NO.21 Court 5 (Video Conferencing) SECTION II-B

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 (Cr1.) No(s). 6349/2020

(Arising out of impugned final judgment and order dated 29-01-2020 in BLAPL No. 4985/2019 passed by the High Court Of Orissa At Cuttack)

RAM GOPAL KHEMKA

Petitioner(s)

VERSUS

THE STATE OF ODISHA

Respondent(s)

(IA No. 56987/2020 - EXEMPTION FROM FILING AFFIDAVIT)

WITH

SLP(Cr1) No. 247/2021 (II-B)

(FOR ADMISSION and I.R. and IA No.2734/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(Cr1) No. 647/2021 (II-B)

(FOR ADMISSION and I.R. and IA No.9050/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT..)

SLP(Cr1) No. 742/2021 (II-B)

(FOR ADMISSION and I.R. and IA No.10806/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 26-02-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Petitioner(s)

Mr. Ashok Kumar Panda, Sr. Adv.

Mr. Satyabrata Panda, AOR

Mr. Aniruddha Purushotham, Adv.

Mr. Manoranjan Paikaray, Adv.

For Respondent(s)

Mr. Shibashish Misra, AOR

Mr. Ashok Panigrahi, AOR

Mr. S.Vinay Ratnakar, Adv

Mr. Nabab Singh, Adv

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

SLP(Cr1) No. 6349/2020

Heard learned counsel for the parties.

Admittedly, the petitioner is in custody from 14.01.2018, facing allegation of having committed offence punishable under Section 302/376(2) (f) (n)/201/34 of Indian Penal Code. It appears that the trial could not proceed further because of quashing petition filed by the petitioner and co-accused. The quashing prayer has been finally disposed of by a separate order passed today in the companion cases.

In the peculiar facts of the present case, therefore, we direct the prosecution to ensure that the trial is concluded not later than 30th September, 2021, failing which in terms of this order, the petitioner may be released on bail by the Trial Court on such terms and conditions as may be imposed by it.

The petitioner as well as co-accused must extend full cooperation to the Trial Court for early disposal of the trial. In case the Trial Court is of the opinion that the accused are responsible for delay in progress of the trial, that fact may be noted in the roznamcha so that it would come handy in considering the grievance of the

prosecution that the accused are responsible for delay of trial and cannot, therefore, claim equity.

Learned counsel appearing for the concerned petitioner(s) including co-accused assure that full cooperation will be extended for early completion of the trial. That undertaking is placed on record.

During the pendency of this petition, certain FSL reports have been submitted by the State Forensic Science Laboratory, Rasulgarh, Bhubaneswar. The Registry is directed to forward the same to the Trial Court forthwith by a Special Messenger at the cost of the respondent State, so as to reach the Trial Court not later than one week from today and further progress of the trial is not impeded in any manner.

The prosecution shall also ensure that necessary medical attention is given to the petitioner(s) while in jail and if there is any deficiency in that regard, it will be open to the petitioner(s) to bring it to the notice of the Trial Court and invite appropriate directions, as may be necessary.

In view of the above, this petition is disposed of.

Pending applications, if any, stand disposed of.

SLP(Cr1) No. 247/2021

This Special Leave Petition essentially challenges the order passed by the Magistrate dated 20.09.2018 taking cognizance of offence against the petitioner(s). It is argued that accepting the evidence on record as it is, no case under Section 302 of Indian Penal Code is made out against the petitioners at all.

Assuming that this contention is correct, at the time of framing of charge, it will be open to the Trial Court to frame appropriate charge on the basis of evidence placed on record by the prosecution along with chargesheet.

It was then urged that the High Court has made sweeping observations and even relied upon material which was not available to the Trial Court when the cognizance order was passed. Moreover, the discussion in the impugned judgment gives an impression that it has recorded a finding on relevant facts which will go against the petitioner(s). In this context, we may unreservedly observe that the discussion in the impugned judgment is only tentative and made by the High Court in reference to the relief considered in the petition.

However, the Trial Court will be obliged to examine all aspects on its own merits, including the admissibility and reliability of the relevant evidence that is likely to be produced by the prosecution during the trial.

In other words, none of the observations made in the impugned judgment will come in the way of the petitioner(s) nor the Trial Court should be influenced by the same while considering the evidence to be produced by the prosecution before it during the trial. All contentions available to both the sides in that regard are left open.

We are informed that the High Court had given protection to the petitioner(s), of no coercive action to be taken against them. That protection is being continued for a period of two weeks from today, to enable the petitioner(s) to apply for regular bail before the Trial Court. That be decided, preferably, on the same day provided 48 hours advance notice is given to the local public prosecutor before moving the bail application and surrendering before the concerned court. The argument that the petitioner(s) be extended parity with Avinash Khemka, may be considered by the Trial Court on its own merits and in accordance with law.

All contentions available to the parties are left open.

In view of the above, nothing more is required to be dealt with in this petition and the same is disposed of accordingly.

Pending applications, if any, stand disposed of.

SLP(Cr1.) Nos. 647 and 742 of 2021

The Special Leave Petitions stand disposed of on the same terms as in companion matter(s).

In other words, the trial court shall proceed with the matter on its own merits and in accordance with law uninfluenced by any observation(s) made by the High Court in the impugned judgment and order. All contentions are left open.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)