

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. \_\_\_\_\_ of 2002@@  
CC  
arising out of  
Special Leave Petition (Crl) No. 855 of 2002@@  
CC

Satya Narain .....Appellant (s)  
Versus

Ramesh Kumar & Anr. ....Respondent(s)

With

[SLP(Crl) No. 3609/2002]

O R D E R~@@  
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Leave granted.

The complainant is the appellant in this appeal against the impugned order of the Punjab and Haryana High Court, releasing the accused on bail in exercise of power under Section 167(2) Proviso of the Code of Criminal Procedure (Cr.P.C.).

The incident itself occurred on 19.11.2000. It is not necessary for us to state the series of events subsequent to 19.11.2000. Suffice it to say that the Magistrate took cognizance on 19.7.2001 and committed the case to the Court of Sessions as the case is one triable by a Court of Sessions. The said order of cognizance and committal was assailed by the accused by filing an application before the High Court and the accused moved for bail. The High Court, being of the opinion that there has been an infraction of the provisions of Section ...2

167 Cr.P.C. inasmuch as no charge-sheet could be filed within 90 days from the date of arrest which, in the case in hand, was 22.11.2000, released the accused on bail.

We have no hesitation to come to the conclusion that the High Court was not entitled to invoke the provisions of Section 167 Cr.P.C. once the Court had taken cognizance of the offence and committed the matter to the Court of Sessions. At that stage, it would be open for the accused to move for regular bail invoking the power under Section 439 Cr.P.C. Mr. Mishra, the learned senior counsel appearing for the accused, contended that the application was in fact under Section 439 Cr.P.C. also. But the High Court does not appear to have exercised the power of grant of bail taking into consideration the gravity of offence and all other germane factors and has merely released the accused on bail by invoking the power under Proviso (2) to Section 167 Cr.P.C.. In that view of the matter, the impugned order of the High Court is set aside and the accused persons should be taken into custody forthwith.

Needless to mention, our order does not debar the accused to move the appropriate forum for grant of regular bail and, on such an application being filed, that application will be considered on its own merits.

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The appeal stands disposed of accordingly.  
SLP(Crl) No. 3609/2002@@  
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There is no case for transfer. The special leave petition is dismissed.

.SP1

.....J@@  
BBBBBBBBBBBBBBBBBBBB  
( G.B. PATTANAİK )@@  
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New Delhi;  
August 26, 2002

.....J@@  
BBBBBBBBBBBBBBBBBBBB  
( RUMA PAL )@@  
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.PAA  
.PL65  
ITEM No.44

Court No. 2

SECTION IIA  
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. 855/2002

(From the judgement and order dated 30/10/2001 in CRLM 27604/01 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

SATYA NARAIN

Petitioner (s)

VERSUS

RAMESH KUMAR & ANR.

Respondent (s)

( With Office Report )

With

SLP(Crl.)No.3609/2002  
(With appl(s) for ex parte stay)

Date : 26/08/2002 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAİK  
HON'BLE MRS. JUSTICE RUMA PAL

For Petitioner (s) Mr. Kapil Sibal, Sr. Adv.  
Ms. Ruby Singh Ahuja, Adv.

In SLP 3609

Mr. R C Kaushik, Adv.

For Respondent (s)

Mr. P N Mishra, Sr. Adv.

Mr. Sibbo Sankar Mishra, Adv.

Mr. J.P. Dhanda, Adv.

Mrs. RR Dhanda, Mr. Sunder Khatri, Adv.

Mr. Manoj Swarup, Adv.

Mr. Sandeep Srivastava, Adv.

UPON hearing counsel the Court made the following

O R D E R

.....L.....I.....J  
.SP2

Leave granted.

The appeal stands disposed of in terms of the signed order. The SLP also stands dismissed.

.SP1

(J.S. Rawat)  
Court Master

(Suneet Bala Sharma)  
Assistant Registrar

(Signed order is placed on the file)