

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.3778/2004

(From the judgement and order dated 09/08/2004 in CRLM No.8435/2004
of the HIGH COURT OF PATNA)

MD. SHAHABUDDIN

Petitioner(s)

VERSUS

STATE OF BIHAR

Respondent(s)

(With appln(s) for Bail and office report)

Date: 01/11/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Petitioner(s)

Mr. Sushil Kumar, Sr. Adv.

Mr. Rudreshwar Singh, Adv.

Mr. Tapeshe Kumar Singh, Adv.

Mr. Vivek Sood, Adv.

Mr. Anand Amritraj, Adv.

Mr. Prabhat Kumar, Adv.

Mr. Alok Kumar, Adv.

Mr. Jitendra Mohan Sharma, Adv.

For Respondent(s)

Mr. B.B. Singh,Adv.

Mr. Kumar Rajesh Singh,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties.

Leave granted.

The criminal appeal is disposed of.

[T.I. Rajput]

Court Master

[Shelly Sengupta]

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1242 OF 2004

(Arising out of S.L.P. (Cr1.) No.3778 of 2004)

Md. Shahabuddin

...Appellant(s)

Versus

State of Bihar

...Respondent(s)

O R D E R

Heard the learned senior counsel for the petitioner and learned counsel for
the respondent-State.

Leave granted.

The order dated 9th August, 2004 made by the High Court is under challenge in this appeal. The application filed by the appellant for bail was rejected by the High Court on the ground that he had obtained an order from the trial court to move out of Siwan jail to take oath as a Member of Parliament at Delhi, when the application made for bail by him was pending before the High Court. The High Court, in the impugned order, has stated thus:

"In this context, it may be referred here that when the bail matter of the petitioner was pending in this Court for disposal, the Court - in - seisin of the case had no jurisdiction to interfere in the matter in any manner. At that time the present Criminal Misc. No.8435 of 2004 and I.A. (Criminal) No.439 of 2004 were pending for disposal in this Court but the petitioner intentionally moved the Lower Court and his movement was allowed.

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Thus, the petitioner intentionally interfered in the administration of justice. The act of obtaining the order by him from the Court - in - seisin of his case was deliberate violation of Court's order passed on 1.3.2004 and this can be described to be contemptuous in nature. Therefore, the case of the petitioner is clearly distinguishable from the case of the other accused on bail. His prayer for bail stands rejected.

The petitioner, Md. Shahbuddin and Anant Prasad Srivastava, Presiding Officer, First Additional Fast Track Court, Siwan, are hereby directed to show their cause

by 15th of September, 2004 as to why the contempt proceeding be no initiated against him."

As can be seen from the order, extracted above, the application filed by the appellant for bail was rejected by the High Court stating that the case of the appellant was distinguishable from the case of the other co-accused. The High Court took note that there has been deliberate violation of the order of the High Court dated 1st March, 2004 by the appellant. Not only the High Court rejected the application for bail on this ground but also issued show cause notice to the appellant as well as the Presiding Officer of the Fast Track Court, Siwan [for short, "the Presiding Officer"] as to why contempt proceedings should not be initiated against them. The contempt proceedings are pending before the High Court.

The learned senior counsel for the appellant urged that the application for bail filed by the appellant ought to have been allowed, having regard to the facts and circumstances of the case. He submitted that five other co-accused have been enlarged on bail on various dates. Merely

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because the appellant moved from Siwan jail to Delhi to take oath as a Member of Parliament, that too in custody, could not be considered as a ground for rejecting the application for bail filed by him. He also added that contempt proceedings havin g

been initiated and even before deciding the contempt proceedings, the application for bail filed by the appellant ought not to have been rejected on the ground of committing contempt of the order of the High Court dated 1st March, 2004. He also submitted that the application for bail made by the appellant was not considered on merits as he had raised several grounds therein.

It is true that the High Court has not considered the various grounds raised by the appellant in the application for bail on merits but rejected it taking note of the conduct of the appellant, as indicated in the order of the High Court extracted above. The position now is that the contempt proceedings initiated against the appellant and the Presiding Officer are pending before the High Court. In these

circumstances, the appropriate course to be followed by the High Court would be to decide the contempt proceedings initiated against the appellant and the Presiding Officer and the application for bail filed by the appellant on merits together or decide the contempt proceedings in the first instance and then take up the application for bail for decision on merits immediately thereafter. In this view, we set aside the

impugned order, so far as it relates to the rejection of the application for bail filed by the appellant making it clear that the impugned order initiating contempt proceedings against the appellant and the Presiding Officer remains undisturbed.

...4/-

Having regard to the pendency of the proceedings for quite some time, we request the High Court to dispose of the contempt proceedings and the application for bail as expeditiously as possible, preferably within a period of two months.

The criminal appeal is, accordingly, disposed of.

.....J

[SHIVARAJ V. PATIL]

.....J

[B.N. SRIKRISHNA]

New Delhi,

November 01, 2004.