H5ITEM NO.1 COURT NO.6 SECTION II

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(s).1258/2005

(From the judgement and order dated 17/11/2004 in CRLMA No. 18020/2004 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

SHASHI TIWARI Petitioner(s)

VERSUS

RADHA KRISHNA SINGH & ANR. Respondent(s)

(With appln(s) for exemption from filing O.T.,stay and office report)

Date: 18/10/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Petitioner(s)

Mr. Anish Kumar Gupta,Adv.

For Respondent(s) Mr. Nalin Tripati,Adv.for

Mr. Rameshwar Prasad Goyal,Adv.

Mr. Javed Mahmud Rao,Adv.

Mr. Shahid Ali Rao,Adv.

Mr. Musharraf Chawdhry,Adv.

Mr. Ankur Mittal,Adv.

UPON hearing counsel the Court made the following

O R D E R

We have heard learned counsel for the parties.

Leave granted.

The appeal is allowed setting aside the impugned order of the High Court granting bail to Respondent No.1 and direct that he shall be taken into custody. However, we may observe that nothing said in this order shall prejudice the case of Respondent No.1 in the trial.

[SUMAN WADHWA] [VIJAY DHAWAN}
COURT MASTER COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1073 OF 2006
(Arising out of SLP(Crl.)No. 1258/2005)

SHASHI TIWARI .. APPELLANT

vs.

RADHA KRISHNA SINGH & ANR... RESPONDENTS

O R D E R

We have heard learned counsel for the parties.

Leave granted.

The order impugned in this appeal by the wife of the deceased Smt. Shashi Tiwari is the order of the High Court of Allahabad in Criminal Bail Appln. No. 18020/2004 whereby the High Court released Respondent No.1 on bail in a criminal case wherein he is alleged to have committed the offence punishable

under various provisions of the Indian Penal Code, apart from Sec.302 IPC.

From the facts of the case, it appears that Respondent No.1 and others were involved in a case in which the Block Development Officer was killed. The case of the prosecution is that several persons came to the Bank dragged the Block Development Officer out and killed him, not by using any fire arm but by beating with fists and legs and battering him with the butt of the fire-arms carried by them. It is not disputed that the Block Development Officer died on the injuries sustained by him.

We find that Respondent No.1 before us is involved in several criminal cases. It is submitted before us that in one of the cases in which he charged of the offence under Sec.302 he has been acquitted but there are several other cases against him. It is also not disputed that when the occurrence took place Respondent No.1 was on bail in another case. The plea of the State before the High Court was that Respondent No.1 being a hardened criminal he ought not to be released on bail. He is a cause of terror in the locality and ultimately the State had to resort to his detention under the National Security Act.

It was argued before the High Court that the appellant is a hardened criminal and he was on bail when he committed the offence. There were cases pending against him and there was an apprehension that he may tamper with the evidence and threaten the witnesses.

Having regard to the criminal antecedents of Respondent No.1 and in particular having regard to the fact that Respondent No.1 was on bail when the incident took place in which he is alleged to have assaulted the deceased and committed his murder, the High Court ought not to have exercised its discretion under Sec. 439 of the Criminal Procedure Code in his favour.

Counsel for Respondent No.1 submitted before us that Respondent No.1 being a Village Pradhan is a political figure. He is being falsely implicated in criminal cases. That is not a matter which may be considered at this stage for grant of bail.

The pendency of large number of cases against Respondent No.1 itself is prima facie proof of the fact that he indulges in activities which create a sense of terror in society. Even in the First Information Report lodged in this case the complainant apprehended danger to his life.

Having considered the facts and circumstances of the case we are satisfied that the High Court while granting bail to Respondent No.1 did not take into account the relevant circumstances appearing on record and granted bail without even dealing with the submissions urged before it by the State.

We, therefore, allow this appeal, set aside the impugned order of the High Court granting bail to Respondent No.1 and direct that he shall be taken into custody. However, we may observe that nothing said in this order shall prejudice the case of Respondent No.1 in the trial.

.....J.

(B.P. SINGH)

.....J.

(TARUN CHATTERJEE)

NEW DELHI;

OCTOBER 18, 2006.