

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. OF 2009

(@ PETITION FOR SPECIAL LEAVE TO APPEAL NO. 2737 OF  
2008)

SALAHUDDIN

Appellant(s)

Versus

STATE OF U.P. & ANR.

Respondent(s)

ORDER

Leave granted.

This appeal is directed against the order dated 1<sup>st</sup> November, 2007 passed by the Allahabad High Court in Criminal Misc. Bail Application No. 19562 of 2007 granting bail to the respondent No. 2, Ghahshyam Das Gupta, who is the contesting respondent No. 2 in this appeal, in connection with Crime No. 1583 AK of 2005 under sections 147,148,149,323,504,506,436,302 and 201 IPC and also section 6 of the Unlawful Activities (Prevention) Amendment Act, 2004.

It appears from the order impugned in this appeal that on 14th October, 2005, there was rioting in District Mau in which one Abu Talib, son of the informant, Hazi Salauddin, who is the appellant before us, was killed.

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From the FIR and some of the statements made, the respondent No. 2 has been assigned a specific role in the incident and accordingly his pray for bail before the Ld. Sessions Judge was refused. However, on moving the High Court, the High Court took into consideration various matters which were not really relevant in deciding the question as to whether bail should be granted to the respondent No. 2 or not. In fact, quite contrary to the decisions of

this Court, the High Court went into details touching upon the merits of the case while deciding the prayer of the respondent No. 2 for grant of bail.

As was stated by us in the case of Gobarbhai Naranbhai Singala Vs. State of Gujarat and others (2008)3 SCC 775 wherein reference was made to the decision of this Court in Amarmani Tripathi Vs.State of U.P.(2005) 8 SCC 21 wherein it has been indicated that a detailed examination of the evidence is to be avoided so that no prejudice is caused. It was observed that only a brief examination is to be done to satisfy about the facts and circumstances or otherwise of a prima facie case.

In the instant case, the said principle appears to have been violated.

It must be made clear that we are considering an order granting bail passed on 1st November, 2007, but at the same time we have also been called upon to consider

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the validity of the order which has been passed by the High Court on the basis of the materials before it. We cannot lose sight of the fact that investigation was to some extent hampered at the very initial stage since the accused were not arrested, allegedly on account of the fact that their arrest would lead to widespread disturbances. This, in fact, leads one to presume that the reasons set out by the High Court for granting bail was misconceived.

When there was direct evidence connecting the respondent No. 2 with the incident, the High Court, in our view, ought to have been circumspect in dealing with the matter.

We are, therefore, unable to sustain the order passed by the High Court granting bail to the respondent No. 2 and such order is accordingly set aside. However, we are informed that the Trial Court is at a stage when the first prosecution witness is being cross-examined and there are about 15 witnesses who are yet to be cross-examined and the defence may also examine its own witnesses. In

that view of the matter, we direct the Trial Court to expedite the trial and complete the same expeditiously, but positively within six months from the date of communication of this order.

In view of this order, the respondent No.2 is directed to surrender before the Trial Court within two

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weeks from date and the Trial Court shall, thereafter, take appropriate action in terms of this order.

We make it clear that any of the observations made in this order or in the order of the High Court will not in any way influence the trial. Since, we have not considered the order of the High Court on its merits but the manner in which it was passed, we also indicate that the respondent No. 2 will be free to apply for bail afresh before the Trial Court or the High Court and if such application is made, the same is to be disposed of in accordance with law.

.....J.  
(ALTAMAS KABIR)

.....J.  
(CYRIAC JOSEPH)

New Delhi,  
May 05, 2009.  
ITEM NO.2

COURT NO.7

SECTION II

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).2737/2008

(From the judgement and order dated 01/11/2007 in CMBA No. 19562/2007 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

SALAHUDDIN

...Petitioner(s)

VERSUS

STATE OF U.P. & ANR.

...Respondent(s)

(With appln(s) for exemption from filing O.T.,cancellation

of bail,c/delay and office report )

Date: 05/05/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR

HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s) Mr. Anurag Kishore, Adv.

Mr. Sharique, Adv,

Mr. Rajesh Kumar,Adv.

For Respondent(s) Mr. Shail Kumar Dwivedi, AAG

Mr. Pramod Swarup,Adv.

Mr. Anuvrat Sharma, Adv.

Mr. M.P. Jha,Adv.

Mr. Subodh Kr. Pathak, Adv.

Mr. Ram Ekbal Roy,

Mr. Nikhil Nayyar,Adv.

Mr. Pramod Swarup, Adv.

Mr. Anuvrat Sharma ,Adv.

UPON hearing counsel the Court made the following  
ORDER

Leave granted.

The Criminal Appeal is disposed of in terms of  
the signed order.

(B.Parvathi)

Sr. P.A

(Signed order is placed on the file)

(Juginder Kaur)

Court Master