

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. 1323/2004

(From the judgement and order dated 12/02/2004 in CRLOP 2975/04
of The HIGH COURT OF MADRAS)

INSPECTOR OF POLICE, ANNA NAGAR, T.NADU

Petitioner (s)

VERSUS

MUBARACK MANTHIRI

Respondent (s)

(With Appln(s). for stay and cancellation of bail)
(With Office Report)

Date : 10/09/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Petitioner (s)Mr. LN. Rao, Sr.Adv.
Mr. Subramonium Prasad.,Adv.
Mr. Gopalakrishnan, Adv.
Mr. Abhay Kumar, Adv.
Mr. Rahul, Adv.

For Respondent (s)Mr. TR. Andhyarujina, Sr.Adv.
Mr. R. Shanmughasundaram, Sr.Adv.
Mr. V.G. Pragasam,Adv.
Mr. NR. Elango, Adv.

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

Leave granted.
The appeal is allowed.

(S. Thapar)
PS to Registrar

(Vijay Dhawan)
Court Master

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.....OF 2004
(Arising out of SLP(Crl.)No. 1323/2004

Inspector of Police, Anna Nagar, T.Nadu

Appellant (s)

versus

Mubarack Manthiri

Respondent (s)

O R D E R

Leave granted.

The respondent, along with other accused, is charged for offence under Section 302 IPC, in relation to a murder that took place on 20th of May, 2003. He was arrested on 27th of May, 2003.

An application for grant of bail, pending trial, filed by him was dismissed by a learned Judge of the High Court on 13th January, 2004. One of the plea put forth was that all the accused, except the respondent and accused No.13, had been released on bail.

Within two weeks i.e. on 28th January, 2004 another application for grant of bail was filed by the respondent. Prima facie, no change of circumstances seems to have been alleged in the application. On consideration thereof, another learned Judge by impugned order granted bail, inter alia, noticing that investigation is over, charge sheet has been filed and the case has been committed to Sessions. Though, in the application it was disclosed that earlier bail application had been rejected on 13th January, 2004, the impugned order does not refer either to the said fact or to any change of circumstance.

Having heard learned counsel and having regard to the facts and circumstances of the case, we are of the view that the application dated 28th January, 2004 should be placed before and heard by the learned Judge who passed the order dated 13th January, 2004. It would be open to the respondent to file an additional affidavit in support of application dated 28th of January, 2004 placing on record any further fact and change of circumstance, if any, since the passing of the order dated 13th January, 2004. The application seeking bail would be considered afresh

on its own merits without being influenced either by the order dated 13th January, 2004 or the order dated 12th February, 2004 impugned herein. We express no opinion on the question whether the respondent deserves to be enlarged on bail or not. The question will be decided by the

High Court on the own merits of the application. We request the High Court to expeditiously decide the bail application being Criminal Original Petition No.2975 of 2004, and preferably on or before 31st October, 2004 since as a result of setting aside of the impugned order, the respondent would be required to surrender.

For the aforesaid reasons, we set aside the impugned order, allow the appeal and remit Criminal Original Petition No.2975 of 2004 for its fresh decision in the aforesaid terms.

.....J
(Y.K. Sabharwal)

New Delhi,.....J
September 10, 2004(D.M. Dharmadhikari)