

ITEM NO.1

COURT NO.9

SECTION II

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRL.M.P. NO. 14350 OF 2010 IN

CRIMINAL APPEAL NO(s). 546 OF 2004

MOHD.JALEES ANSARI & ORS.

Appellant (s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION

Respondent(s)

(With appln(s) for bail in respect of appellant no. 10, and interim bail and office report)

WITH CRL.M.P.. Nos. 534 & 535 of 2012

(With appln. For interim bail on behalf of appellant nos. 9 and 14 for a period of three months)

Date: 20/01/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

For Appellant(s)

Mr. P. Narasimhan,Adv.

Mr. Shakil Ahmed Syed ,Adv

Mr. Satpal Singh ,Adv

Mr. Syed Shahid Hussain Rizvi ,Adv

Mr. Mohd.Irshad Hanif ,Adv

For Respondent(s)

Mr. P.P. Malhotra, ASG,

Mr. Harish Chandra,Sr.Adv.

Mr. P.K. Dey,Adv.

Ms. Padmalxmi igma,Adv.

Mr. Arvind Kumar Sharma,Adv.

UPON hearing counsel the Court made the following

O R D E R

Crl.M.P. No. 14350 of 2010

We have heard learned counsel for the parties.

2

CRIMINAL APPEAL NO(s). 546 OF 2004

The grievance of the appellants in this appeal is that it is pending in this Court since 2004 and it has yet not been finally heard. It is not in dispute that this is a heavy appeal and there are several volumes of evidence.

Learned counsel for the appellant submits that there is a preliminary objections which he is raising and which according to him goes to the root of the matter and the appeal may succeed on that ground. The ground is that in absence of prior approval under Section 20(1) of the TADA the proceeding is initiated.

Learned counsel for the appellant submits

that if the preliminary grounds fails he will argue the case on merits.

Mr. P.P. Malhotra, learned Addl. Solicitor General submits that the preliminary ground does not have much substance.

Since we are not hearing the matter on merits, we only express our anguish that the matter should have been heard by now. We therefore give liberty to the appellant to make necessary prayer for listing of the matter for hearing before an appropriate Bench on the basis of nomination of the Hon'ble The Chief Justice of India.

In the meantime, coming to the question of bail, we have heard learned counsel for the parties. We have also considered the objections raised by Mr. Malhotra. Having regard to the gravity of the offence and having regard to the

3

CRIMINAL APPEAL NO(s). 546 OF 2004

fact that one of the co-accused who was released on bail was subsequently absconding, we are not inclined to grant bail at this stage.

Be that as it may, so far as, the prayer of bail of the appellant - Md. Shamshuddin is made on the basis of serious physical ailment are that Mr. Malhotra has taken instructions and filed an affidavit. From the affidavit of Mr. Javed Siraj, Superintendent of Police, Special Task Force, Central Bureau of Investigation, New Delhi it appears that MRI of the appellant - Md. Shamshuddin was done at SMS Hospital, Jaipur on 21.12.2011. On the basis of the said MRI specialist has advised for surgery of Spondilits With C 5-6 Extruded Disc Compression R C6 NERVE Root.

It therefore, appears that the grievance of the appellant - Md. Shamshuddin so far as his physical ailment is genuine. Considering the aforesaid facts, we pass the following order:

1. During the pendency of the bail application, the appellant may be shifted for treatment under Police Escort to All India Institute of Medical Sciences, New Delhi within two weeks.
2. During the period of two weeks, CBI will secure appointments from the Specialist treating the patient and other formalities will be completed. for

4

CRIMINAL APPEAL NO(s). 546 OF 2004

3. The said surgery should be completed within a period of four weeks from the date of admitting the appellant - Md. Shamshuddin in AIIMS.

4. The State should bear all expenses in the surgery.

In the meantime, we hope and pray that the appellant's appeal may come up for hearing. that time, it is open to the appellant to ask for bail after the surgery is over and the appellant become physically fit, provided the appeal is not heard out.

At

CRL.M.P. Nos. 534 & 535 of 2012

In respect of other applications for bail of Md. Nisaruddin Ahmed (appellant No.9) and Aijaz Akber (appellant No.14), we are issuing notice on the bail applications. Mr. Malhotra, learned ASG is present in Court and accepts notice. Two weeks' time is granted to file counter affidavit. List the matter thereafter.

Two

A copy of this order be sent to the Director, All India Institute of Medical Science for information and compliance.

(KUSUM SYAL)
SR.P.A

(VINOD KULVI)
COURT MASTER