

ITEM NO.4

COURT NO.3

SECTION II

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

Petition(s) for Special Leave to Appeal (Crl.) No(s). 2554/2006

(Arising out of impugned final judgment and order dated 27/03/2006
in CMWP No. 10662/2004 passed by the High Court Of Judicature at
Allahabad)

AMRIT SINGH

Petitioner(s)

VERSUS

STATE OF U.P. & ORS.
(For final disposal)

Respondent(s)

Date : 09/09/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MRS. JUSTICE R. BANUMATHIFor Petitioner(s) Mr. Vivek Vishnoi, Adv.
Mr. Mukesh Verma, Adv.
Mr. Yash Pal Dhingra, Adv.For Respondent(s) Mr. Sanjay Mani Tripathi, Adv.
Ms. Anu Gupta, Adv.Mr. Pramod Swarup, Sr. Adv.
Mr. Mukul Singh, Adv.
Ms. Pragati Neekhara, Adv.UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

This appeal arises out of an order dated
27.03.2006 passed by the High Court of Judicature at
Allahabad whereby Crl. Misc Writ Petition No. 10662 of

2004 filed by the appellant herein has been dismissed with the observation that the appellant can approach the Sessions Judge concerned for appropriate action in the matter who shall then take appropriate steps warranted under law. The factual backdrop may in a nutshell be summarised as under:-

Krishan Deo Tiwari, respondent No. 7 in this appeal and two others namely Rama Nand Tiwari, respondent No. 8 and Nand Kishore Tiwari, respondent No. 9 were all prosecuted for offences punishable under Sections 302, 323 read with 34 Indian Penal Code. The Trial Court found all of them guilty and sentenced them to undergo imprisonment for life. Aggrieved by the conviction and the sentence awarded to them, the convicts preferred Criminal Appeal 2844 of 1978 before the High Court of Judicature at Allahabad which was partly allowed by the High Court in terms of its order dated 30.11.1979 whereby the High Court while upholding the conviction and sentence of life imprisonment awarded to Krishan Deo Tiwari acquitted Rama Nand Tiwari and Nand Kishore Tiwari for the said offence but upheld their conviction and sentence of six months under Section 323, IPC with

a fine of Rs. 250/- each and a default sentence of three months.

The petitioner's case is that while Krishan Deo Tiwari-respondent No. 7 remained in custody till the date of judgment of the Trial Court dated 14.10.1979, the remaining two convicts namely Rama Nand Tiwari and Nand Kishore Tiwari were released on bail by the High Court in terms of its order dated 16.10.1978. With the disposal of the appeal by the High Court, Rama Nand Tiwari and Nand Kishore Tiwari appear to have undergone the remainder of sentence awarded to them. The fine imposed by the High Court is also reported to have deposited by the said two convicts. The present proceedings therefore do not therefore make any grievance against Rama Nand Tiwari and Nand Kishore Tiwari insofar as Crime Case No. 50/78 is concerned.

The grievance in this appeal primarily relates to respondent No. 7 Krishan Deo Tiwari who was in custody as on the date of the dismissal of the appeal filed by him before the High Court of Allahabd. The petitioner's version is that with the dismissal of the appeal filed by respondent No. 7, the said respondent

was moved from District Jail, Basti to Central Jail, Varanasi as convict No. 23469 to undergo the sentence awarded to him. The appellant's further case is that respondent No. 7 was moved back to Basti jail on 04.12.1978 as convict No. 1058. He was not however sent back to Varanasi Central Jail but was released from District Jail, Basti itself on 09.01.1979. Ever since his release he has neither surrendered back to custody nor undergone the sentence of life imprisonment awarded to him by the courts below is the grievance of the appellant. This version when examined by the authorities concerned was found to be correct inasmuch as the affidavit filed by Senior Superintendent of District Jail, Ghaziabad on behalf of the Director General (Prisons), State of U.P. points out that upon dismissal of the appeal filed by respondent No. 7 he was released from District Jail, Basti on 09.01.1979. The affidavit further states that the jail records do not indicate the circumstances under which the convict was released. Additional Director General (Prisons) and the Deputy Inspector General (Prisons), Gorakhpur Range were therefore directed by the Director General of

Prisons to conduct an inquiry and to find out whether respondent No. 7 had served out the sentence awarded to him in Sessions Trial No. 143 of 1978. The inquiry conducted by the Additional Director General and the Deputy Inspector Gorakhpur Range, revealed that respondent No. 7 had remained in Central Jail, Varanasi from 02.11.1978 to 03.12.1978 and was brought to the District Jail, Basti for getting his deposition recorded in connection with some other case pending before a Court at Basti. The inquiry revealed that there was no document on record to support the release of the convict from District Jail, Basti. Even the name of the Court or learned Judge under whose orders he was released is not mentioned in the jail record at Basti. All that is recorded is that accused Krishan Deo Tiwari has been released on parole under the signatures of Sh. B.N.Srivastava, the then Superintendent of Jail and Hari Om Saxena-Incharge convict prisoner on 09.01.1979. The affidavit refers to a certain complaint filed by one Shailender Dubey regarding the release of respondent No. 7 and the registration of a case based on the said complaint as Crime Case No. 207 of 2004 under Section

419, 420, 466, 467, 471, 484 of the IPC. It also refers to the transfer of the investigation in that case under the orders of the Joint Secretary, Home (Police) to CBCID with immediate effect. The affidavits refer to a report submitted on 30.12.2003 to the Inspector General of Police CBCID. The affidavit recalls the statement of the convict made before the officers conducting the enquiry in which the convict appears to have claimed that he had served the sentence and remained in jail continuously up to 02.10.1996 when he was finally released after completion of his sentence. Even in these proceedings respondent No. 7 claims that he was released from custody on parole for a period of three months on 09.01.1979 but upon expiry of the said period he had surrendered back to custody and served the life sentence awarded to him. The inquiry conducted by the Addl. Director General of Prisons however does not support that version as is evident from the following passage appearing in the affidavit filed before this Court.

"But from the jail record and the statement of jail staff it is clear, that this contention of the accused is absolutely wrong. Because

the fact is that after being released on 9.1.79, he never came back to the jail to serve out the remaining period of imprisonment."

The affidavit also refers to the convict Admission and Release register maintained at District Jail, Basti for the past 90 years examination whereof does not support the convict's version regarding release on parole nor does the same disclose the basis on which he was so released. In para 10 of the affidavit the following significant statement is made:

"In the register which is available in the jail, neither the date is mentioned nor any information is available regarding the order of bail on the basis of which accused Krishan Deo Tiwari was released. This was the position in connection with all the accused/convicts who have been released from the District Jail, Basti."

Suffice it to say that the version of the convict-respondent No. 7 that he was released on parole for three months or that he surrendered back to custody after expiry of the said period or that he remained in jail to serve the life sentence is shrouded in mystery

and unsupported by any record whatsoever. The circumstances in which the appellant was transferred from Varanasi Central Jail to District Jail, Basti his detention in District Jail, Basti, his release on parole, his surrender back to custody in Basti or Varanasi or his incarceration in District Jail, Basti or in Central Jail Varanasi or any other jail in the State of U.P. remains a mystery that needs to be unravelled. It is obvious that the inquiry held by the Additional Director General of Prisons has also not laid bare the circumstances in which respondent No. 7 was released and never apprehended to serve the sentence awarded to him.

In the course of the hearing before us, learned counsel for respondent No. 7 was asked whether he had served his life sentence in District Jail, Basti or in Central Jail, Varanasi. Learned counsel was unable to make any definite statement on this aspect. We have therefore no manner of doubt that there is a serious flaw in the entire process leading to the alleged release of the convict in the year 1979 his undergoing incarceration for the period awarded to him and his eventual release from custody in the year 1979 as

alleged by him. All these aspect need a thorough investigation. We say so in the context of the prevailing conditions in the State of U.P. where convicts whose appeals are finally dismissed by the High Court and even by this Court remain at large for a long period and are never apprehended. We have had an occasion to deal with a matter in which a life convict was allowed to remain at large for over a decade and continued to be at large even after this Court had taken cognizance of the failure of the authorities to apprehend him. We have in that context issued directions and set up State Level Supervisory Committees in all the States to prevent situations where criminals found guilty, sentenced to undergo imprisonment for as long as life remain at large and are never apprehended primarily because the Agency charged with the duty of apprehending them is either in collusion with such criminal elements or turns a blind eye towards performance of their duty. We may in this regard refer to the following passage from our order dated 23.07.2014 in CrI. A. No. 14-16 of 2009 (Lallan Singh and Ors. Vs. State of Uttar Pradesh):

"It is in this backdrop that we propose to issue directions not because we intend to digress from the procedure that the Cr.P.C. lays down but because the procedure so prescribed ought to be effectively enforced. A close monitoring of the working of the existing mechanism wherever it is in place is required for without such monitoring the process may steadily become wholly ineffective defeating the entire purpose underlying trial and conviction of such offenders. An effective supervisory mechanism would, in our opinion, add to the efficacy of the law enforcement process. Having heard learned counsel for the parties on the question of composition, any such supervisory mechanism, we are of the opinion that a state level supervisory committee comprising (i) Secretary to Government, Home Department; (ii) Secretary to Government, Department of Law; (iii) Director General of the State Police and (iv) Secretary, State Legal Services Authority can be constituted to monitor and review such cases on a six monthly basis. A biannual status report shall then be submitted by the State level committee to the Executive Chairman of the State Legal Services Authority who may in consultation with the Patronage Chief of the State Legal Service Authority take such action in the matter as is considered fit including, if necessary, taking up the

mater on the judicial side. We accordingly direct the Chief Secretaries of all the States and Union Territories in the country to constitute a State level Supervisory Committee comprising the members, indicated above, within three months from the date a copy of this order is received by them under intimation to the Chairperson, State Legal Service Authority concerned. We make it clear that the constitution of the State level committee is in addition and not in substitution of any existing mechanism at the district level."

The facts of the case at hand prima facie suggest that there is a deep rooted malaise prevalent in the State of U.P. No other inference can be drawn if a convict committed to jail can secure his release from custody in the manner noticed in the present case. It is unfortunate that agencies that are charged with the duty of upholding the rule of law are themselves involved in this kind of a racket. We do not wish to say anything further at this stage lest any observations made by us causes prejudice to any individual or to the inquiry that we propose to direct into this episode. In our opinion the only way the true facts can be discovered and the involvement of those who may be responsible for

the sordid affair exposed and brought to book is to direct an inquiry by the Central Bureau of Investigation. We accordingly direct the Director CBI to get a preliminary inquiry conducted into the entire episode and if necessary to register an appropriate case against all those responsible in connection with the release of the convict, fabrication of record and such other offences as may be found to have been committed. The officer to whom the inquiry is assigned by the Director, CBI would do well to take custody of the relevant record from the Central Jail at Varanasi and District Jail, Basti before the said record is destroyed or tampered with. We grant three months' time to the CBI to report back to this Court about the result of the inquiry and the action that has been taken in the matter.

Post immediately after the report is submitted.

(Shashi Sareen)
Court Master

(Veena Khara)
Court Master