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SLP(Crl.)No. 4059 OF 2000

ITEM No.63

Court No. 4

SECTION II  
A/N MATTER

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. 4059/2000

(From the judgement and order dated 07/08/2000 in CRMBA 11395/2000  
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

RAKESH KUMAR PANDEY

Petitioner (s)

VERSUS

MUNNI SINGH @ MATA BUX SINGH & ANR.

Respondent (s)

( With Appln(s). for cancellation of bail and  
exemption from filing c/c of the impugned Judgment and  
permission to place addl. documents on record )  
With

SLP(Crl.)No. 4237/2000

Date : 12/03/2001 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK  
HON'BLE MR. JUSTICE U.C. BANERJEE

For Petitioner (s) Mr. R.K.Jain,Sr.Adv.  
(In SLP 4059/2000) Mr. P.K. Jain,Adv.  
Mr.P.K.Goswami,Adv.

(In SLP 4237/2000) Mr. P.N. Mishra,Sr.Adv.  
Mr.P.K.Jain,Adv.  
Mr. P.K. Goswami,Sr.Adv.

For Respondent (s) Mr. U.R.Lalit,Sr.Adv.  
(In SLP 4237/2000) Mr. Ashok Kumar Singh,Adv.

( In SLP 4059/2000) Mr.S.B. Sanyal,Sr.Adv.  
Mr. A.K.Singh,Adv.

Mr. Prashant Chaudhary,Adv.for  
Mr. Pramod Swarup,Adv.

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

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These two petitions by the informant are directed  
against the order of the learned Single Judge of Allahabad  
High Court releasing the accused respondents on bail. The

incident in question happened on 4.4.1999 and in a broad day light three persons were gunned down. On application for bail being moved, the learned Sessions Judge took into consideration the gravity of the offence as well as the relevant materials on record implicating the accused respondents and came to the conclusion that it would not be in the interest of justice to release the accused respondents on bail. The High Court on being moved, has considered the application for bail and without bearing in mind the relevant materials on record as well as the gravity of offence released the accused respondents on bail, since the co-accused, who had been ascribed similar role, had been granted bail earlier. Mr. Sanyal appearing for the accused Munni Singh and Mr. U.R.Lalit appearing for accused Uday Bhan Singh contended before us that once bail has been granted, for cancellation of the same, as provided under sub-section (2) of section 439, the Court must be satisfied about some other supervening circumstances, which entitles the Court to cancel the bail in question and there being none in the present case, the order granting bail should not be interfered with. In support of this contention, reliance has been placed on the decision of this Court in Subhendu@@

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Mishra Vs. Subrat Kr. Mishra AIR 1999 SC 3026. The counsel@@  
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also placed before us different documents and contended that all those factors must be deemed to have been borne in mind by the Court while releasing the accused respondents on bail. Even the FIR was placed before us and it was contended that the story in the FIR is improbable, and therefore the High Court was justified in releasing the accused respondents on bail. Mr. Lalit also further contended that the bail having been granted, it would not be open for an informant to

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approach this Court for interfering with the said order and only the State which could have come up to this Court assailing the order granting bail. Having heard the learned counsel for the accused respondents, we do not find any substance in any of the contentions. Suffice it to say that for a serious charge where three murders have been committed in broad day light, the High Court has not applied its mind to the relevant materials, and merely because some of the co-accused, whom similar role has been ascribed, have been released on bail earlier, have granted bail to the present accused respondents. It is true that State normally should have moved this Court against the order in question, but at the same time the power of this Court cannot be fettered merely because the State has not moved, particularly in a case like this, where our conscience is totally shocked to see the manner in which the High Court has exercised its power for release on bail of the accused respondents. We are not expressing any opinion on the merits of the matter, as it may prejudice the accused in trial. But we have no doubt in our mind that the impugned order passed by the High Court suffers from gross illegality and is an order on total non-application of mind and the judgment of this Court referred to earlier analysing the provisions of sub-section(2) of section 439 cannot be of any use as we are not exercising power under sub-section (2) of Section 439, Cr.P.C. We are considering the legality of the order releasing the accused respondents on bail and whether the High Court had the germane materials before it while exercising its power in releasing the accused respondents on bail. Having regard to the facts and circumstances of the present case and the materials on record, we are of the

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considered opinion that the High Court totally erred in law

in releasing the accused respondents on bail, and such an order cannot be sustained. We therefore set aside the impugned orders passed by the High Court and direct that the accused respondents may be taken into custody forthwith. The Public Prosecutor is permitted to move the High Court for cancellation of the bail of others, if they are so advised.

The SLPs are disposed of.

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(Y.P.Dhamija)

(Suneet Bala Sharma)@@

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COURT MASTER

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