

ITEM NO.3

COURT NO.2

SECTION IIA

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.6114/2011

(From the judgment and order dated 12.8.2011 in Crl. Bail Application No.994/2011 of the HIGH COURT OF BOMBAY)

UNION OF INDIA

Petitioner(s)

VERSUS

HASSAN ALI KHAN AND ANR.

Respondent(s)

(With appln.(s) for stay and exemption from filing c/c of the impugned order and permission to file SLP without c/copy as well as plain copy of the impugned order and office report)

Date: 14/09/2011

This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Petitioner(s)

Mr. H.P. Raval, A.S.G.
Mr. Rajiv Nanda, Adv.
Mr. T.A. Khan, Adv.
Mr. Anirudh Sharma, Adv.
Mr. Anando Mukherjee, Adv.
Mr. Harsh Parekh, Adv.
Mr. B. Krishna Prasad, Adv.-on-record.

For Respondent(s)

Mr. Ishwari Prasad A.Bagaria,Adv.
Mr. Vijay Bhaskar Reddy, Adv.
Mr. Santosh Paul, Adv.
Mrs. Uma Ishwari Bagaria, Adv.
Ms. Arti Singh, Adv.-on-record.
Ms. Mohita Bagati, Adv.
Mr. Arvind Gupta, Adv.

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Ms. Asha G.Nair, Adv.-on-record.
Mr. Shankar Chillarge, Adv.

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SLP(Crl.)6114/11

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

When this Special Leave Petition was taken up for consideration, Mr. Bagaria, learned advocate appearing for the respondent No.1, took a preliminary objection that in the light of Section

372 Cr.P.C. as also the provisions of Section 439(2) Cr.P.C., the Special Leave Petition was not maintainable since it was directed against an order of the High Court granting bail. Mr. Bagaria submitted that the provision for questioning such an order lies squarely in the province of Section 439(2)Cr.P.C. which provides for cancellation of bail granted to an accused.

2. Replying to the said objection, Mr. Raval, learned Additional Solicitor General, urged that the powers of the Supreme Court under Article 136 of the Constitution are not fettered in any way and the Supreme Court was entitled under the said provisions to entertain matters even in relation to orders passed granting bail to an accused. Mr.

Raval referred to various decisions of this Court in this regard. In Subedar Vs. The State of U.P. [1970(2)SCC 445], it has been clearly indicated in paragraph 8 that the scope of Article 136 is very

SLP(Crl.)6114/11

3

wide and the power conferred by it is not hedged in by any technical hurdles and that this overriding and exceptional power has been vested in this Court to be exercised sparingly and only in furtherance of the cause of justice. Mr. Raval submitted that in the facts of this case, the power under Article 136 ought to be exercised in order to do justice in the matter.

3. Reference was also made to the decision of this Court in State of U.P. through CBI Amarmani Tripathi [2005(8)SCC 21], wherein paragraph 17 it was observed that there i

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difference in the powers to be exercised u

Section 439(2)Cr.P.C. and those under Article 136.

While one related to the exercise of powers to

cancel bail, which had been granted on certai

conditions, the powers under Article 136 could be

exercised against the order granting bail itself.

This essential difference has been highlighted by

placing reliance on another judgment of this Court

in Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias

Pappu Yadav and Anr.[2004(7)SCC 528].

4. The aforesaid decisions consistently

indicate that the powers vested in the Suprem

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SLP(Crl.)6114/11

4

Court under Article 136 are not curtailed or hedged

by other statutory provisions and this Court has

authority and jurisdiction to consider the legality

of an order granting bail, in its jurisdiction

under Article 136.

5. The preliminary objection raised by Mr.

Bagaria, is, therefore, rejected.

6. List the matter for further hearing tomorrow

(15th September, 2011), at 2.00 p.m.

(Sheetal Dhingra)
COURT MASTER

(Juginder Kaur)
Assistant Registrar