

JAITEM No. 1C
(For Judgment)

Court No.3

SECTION II

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO...../2009 @ SLP(Crl.) No. 7425/2007

ASHOK KUMAR

Appellant (s)

VERSUS

STATE OF U.P. & ANR.

Respondent (s)

Date :03/02/2009 This Petition was called on for judgment today.

For Appellant (s) Mr. Pravir Kumar Jain, Adv.

For Respondent(s) Mr. S.Rajappa, Adv.

Hon'ble Dr. Justice Arijit Pasayat pronounced

Judgment of the Bench comprising His Lordship and Hon'ble

Dr. Justice Mukundakam Sharma.

Leave granted.

The appeal is disposed of terms of the signed
judgment.

(Shashi Sareen)
Court Master

(Shashi Bala Vij)
Court Master

Signed Reportable judgment is placed on the file.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 202 OF 2009
(Arising out of SLP (CRL) NO. 7425 of 2007)

Ashok Kumar

...Appellant

Versus

State of U.P. and Anr.

...Respondents

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court granting the prayer for bail made by respondent No.2- Kamal Singh. The present appeal has been filed by the complainant.

3. Background facts in a nutshell are as follows:

Respondent No.2 faced trial in Crime No.96 of 2006 for alleged commission of offence punishable under Sections 147, 148, 149, 323, 307, 302, 504 read with Sections 34 and 120B of the Indian Penal Code, 1860 (in short the 'IPC'). Earlier the bail application filed was rejected by the High Court on 16.11.2006. In support of the second bail application it was submitted that pellets were found on the body of the deceased by the doctor and such pellets and the licensed rifle were sent to the ballistic expert. From the report received it is revealed that such pellets could not have been used by the licensed rifle of the accused. The ballistic report completely falsified the prosecution case. The High Court accepted the prayer for bail observing as follows:

"It is admitted case on behalf of prosecution that the applicant committed murder of deceased by causing injuries with the licensed 315 bore factory made rifle. The police report also reveals that three pieces of pellets were found by the doctor in the body of deceased Monu. These pellets and licensed rifle of the applicant were sent to Vidhi Vigyan Prayogshala Agra from where the report was received which is on record which reveals that pellets could not be used in licensed rifle of 315 bore factory made. Such pellets are used in 12 bore weapon. Soft Nose Jacketed Bullets are used in standard cartridges of 315 bore factory rifle. Therefore, this is the fresh and good ground to allow the bail application of present applicant.

After considering the report of ballistic expert, the bail application of present applicant is hereby allowed."

4. Learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous. It is pointed out that the following factors which were highlighted by the prosecuting agency when the bail application was being heard have been completely lost sight of :

"It is admitted that the death of Monu occurred because of gunshot fired from rifle by accused Kamal Singh and the doctor recovered three pieces of metal from the body of Monu. The rifle and the pieces were sent to the Legal Science Laboratory, Agra for matching with the rifle.

The examination report of the said rifle and the pieces of metal dated 2.3.2007 issued by the firearms, Legal Science Laboratory, Agra has been sent to C.J.M Gautam Budh Nagar in which it is stated that the disputed 3 nos. mutilated pellets weight is equivalent to standard A.A. pellets. These kinds of pellets are used in the cartridges of soft jacket firearm example 12 bore. The disputed rifle is 315 bore factory made rifle and the standard cartridges of 315 bore uses soft nose jacket bullet. The examination report of the firearm is found to be dubious as follows:

1. As per the medical report of Monu, there was only one entry wound of bullet on his body whereas in firearm report there are three pellets which are equivalent to three pellets of original 12 bore.

2. As per medical report, the entry of bullet was small and the exit was 3-4 times bigger. This kind of injury occurs only due to weapons, which use soft nose jacket bullet i.e. 315 bore rifle.

3. During the operation of Monu at Safdarjung Hospital, Delhi the doctors found three pieces of metal from the body of Monu.

4. The firearm report is also doubtful on the basis as to how three bullets entered from one hole. As per medical report during exit of bullet, the stomach of the deceased was busted and still three pellets stayed inside also."

5. Learned counsel for the State supported the appellant's stand.

6. Learned counsel for respondent No.2 on the other hand submitted that the ballistic report completely falsified the prosecution version and therefore considering the relevant factors, the prayer for bail has been accepted.

7. As rightly contended by learned counsel for the appellant, the High Court appears to have arrived at a definite conclusion about non possibility of the injuries having been sustained in the manner indicated by the prosecution. While considering the bail application such a finding should not have been recorded. Apart from that, the specific stand of the prosecuting agency as quoted above does not appear to have been noticed by the High Court. It has also been submitted by learned counsel for the appellant that the complainant and independent eye witnesses are being subjected to threats by respondent No.2 and his supporters and there is hardly any progress in the case which is being tried by the Additional Sessions Judge, Fast Track Court-4, Gautam Budh Nagar. From the order sheet it is revealed that adjournments have been liberally granted on the application filed by the accused. Trial is to be conducted on continuous basis in view of what has been provided in Section 209 of the Code of Criminal Procedure, 1973 (in short the 'Code').

8. Since the accused is on bail for considerable length of time, we do not think it appropriate to cancel the bail, though there appears to be some substance

in the plea that the impugned order granting bail suffers from various infirmities. Let the trial be completed within three months. If the complainant or any witness seeks protection for appearance before the Court during trial, the same shall be provided by the concerned police officials. The trial Court would take up the matter on continuous basis to complete the trial within the period indicated above.

9. The appeal is disposed of accordingly.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
February 3, 2009