

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRL.M.P. NO.14921 OF 2006

IN

S.L.P.(CRL.)NO...../2007

Rupinder Singh Sandhu Petitioner

Versus

The State of Punjab & Anr. Respondents

O R D E R

It is stated by the learned Senior Counsel for the petitioner that the petitioner has already surrendered and the surrender certificate shall be produced tomorrow when the matter is taken up by the Bench pursuant to the order dated 5.1.2007.

While allowing the appeal filed by the prosecution the High Court by the impugned order has imposed sentence of three years.

Purportedly acting under Section 389(3) of the Code of Criminal Procedure, 1973 (in short 'Code') the High Court has granted time till 31st January, 2007 to the petitioner to surrender. Question arises

whether the High Court had jurisdiction to do so. Section 389 so far

as relevant reads as follows:

Suspension of sentence pending the appeal:
release of appellant on bail -- (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release;

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an

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Appellate Court may be exercised also by the High Court in the case of an appeal by convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,--

(i) where such person, being on bail, is

sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released bail, be deemed to be suspended."

Section 389 (3) has application when there is a right of appeal. Where prayer for grant of certificate of High Court to appeal in this Court in terms of Article 136 of the Constitution of India, 1950 (in short the 'Constitution') or is made under Article 134(A) of the

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Constitution there is no right of appeal involved. In such cases Section 389(3) has no application. Merely because somebody intends to file application under Article 136 of the Constitution and seek leave to appeal under Article 136 of the Constitution, Section 389(3) of the Code has no application. But the position is different when a case is covered under Article 134(1)(a) or Article 134(1)(b) being covered under Section 2 of the Supreme Court (Enlargement of Criminal Appeal Jurisdiction) Act, 1970 (in short the 'Enlargement

Act'). In Ram Kumar Pande v. The State of Madhya Pradesh (AIR 1975 SC 1252) it was held that no certificate of High Court is required since an order for acquittal had been converted into conviction under Section 302 and life sentence had been imposed.

The appeal in such a case was as a matter of right under the Enlargement Act. Similar view was taken in Chandra Mohan Tiwari and Another v. State of Madhya Pradesh (AIR 1992 SC 891). It was held that under Section 379 of the Code which is in line with Article

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134 (1)(a) & (b) of the Constitution, an appeal lies as of right to this Court in a case where High Court has on appeal reversed the order of acquittal and has convicted and sentenced the accused either to death or imprisonment for life or imprisonment for a term of 10 years or more.

Section 389(3) of the Code is attracted only where a person has got right of appeal and that if the accused has got right of appeal and the sentence imposed does not exceed three years, then unless for recorded reasons the Court refuses to suspend the sentence and grants bail, the Court has to suspend the sentence and grant bail so as to enable the accused present an appeal, and seek appropriate orders from the appellate Court.

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Articles 134 and 136 of the Constitution throw light on the basic issue as to whether filing of special leave petition in terms of Article 136 of the Constitution attracts Section 389(3) of the Code. Article 136 of the Constitution confers no right of appeal and Section 389(3) of the Code applies only to a case where there is a right of appeal. View taken by Full Bench of Kerala and Karnatakan in AIR 1987 SC 270, 2003 CrL.L.J. 992 correctly states the position.

There the High Court was not justified in applying provisions of Section 389(3) of the Code to grant time to the petitioner to surrender.

Place this matter before the allotted Bench pursuant to the order dated 5.1.2007. It is stated that an application for bail is being filed. Let the same also be placed before the Bench tomorrow when the matter is taken up.

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.....J.

(Dr. ARIJIT PASAYAT)

New Delhi,

January 11, 2007

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(CHAMBER MATTER)

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

RECORD OF PROCEEDINGS

CRLMP.NO(s). 14921/2006 in

Petition(s) for Special Leave to Appeal (Crl)... 2006

(From the judgement and order dated 01/12/2006 & 6/12/2006 in AN No. 645/2000

& AN No. 185/2000 of The HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH)

RUPINDER SINGH SANDHU

Petitioner(s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

(Appln(s) for exemption from surrendering)

Date: 11/01/2007 This Petition was called on for hearing today.

CORAM : HON'BLE Dr. JUSTICE ARIJIT PASAYAT

For Petitioner(s)

Mr. Harish N. Salve, Sr. Adv.

Mr. Arun Jaitley, Sr. Adv.

Mr. U.U. Lalit, Sr. Adv.

Mr. Maninder Singh, Adv.

Mrs. Prathiba M. Singh, Adv.

Mr. A. Mariar Putham, Adv.

Mr. Kirti Man Singh, Adv.

Mr. Nitin Sangra, Adv.

Mr. Gaurav Sharma, Adv.

For Respondent(s)

Mr. Rakesh Dwivedi, Sr. Adv.

Mr. Sudhir Walia, Adv.

Mr. Mahinder Singh Dahiya, Adv.

UPON hearing counsel the Court made the following

O R D E R

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up.

(A.D. Sharma)

(Vijay Aggarwal)

Court Master

Court Master

(Signed Order is placed on the file)