

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(s).9510/2009

(From the judgement and order dated 21/10/2009 in CRLMC No. 3206/2009 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

AMRIKA PRASAD Petitioner(s)

VERSUS

STATE OF U.P. AND ANR. Respondent(s)

(With appln(s) for exemption from filing O.T.,stay)

Date: 04/10/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.S. SIRPURKAR
HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s) Mr. Dinesh Kumar Garg,Adv.

For Respondent(s) Mr. Prashant Choudhary, Adv.
Mr. Mukul Singh, Adv. for
Mr. Praveen Swarup,Adv.

Mr. A.K.Prasad, Adv.
Mr. Ashish Pandey, Adv. for
Mr. Nirnimesh Dube ,Adv

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

Leave granted.

The appeal is allowed in terms of signed order.

(Pardeep Kumar) (Shashi Bala Vij)
Court Master Court Master
[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1930 OF 2010
[ARISING OUT OF S.L.P. (CRL.) NO. 9510 OF 2009]

AMRIKA PRASAD ...APPELLANT

VERSUS

STATE OF U.P. & ANOTHER ...RESPONDENTS

O R D E R

1. Leave granted.

2. The appellant-complainant challenges the order dated 21.10.2009 passed by the High Court in Criminal Misc. Case No. 3206(B) of 2009 granting bail to the respondent No. 2-accused Aziz Ahmad who is facing charges for the offences punishable under Sections 363, 366, 376 IPC on the allegation that he took away and kidnapped a girl Usha who was allegedly minor at the time of incident. It is further alleged that the said girl Usha was then raped by the respondent No. 2-accused and thereafter, the girl was handed over to another accused Shiv Dayal who also raped her. It has also come in the statement of the prosecutrix recorded under Section 164 Cr.P.C. that both the accused i.e. respondent No.2 and Shiv Dayal raped her from time to time and she was made to move from one place to another for more than two months.

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3. We have heard learned counsel appearing for the parties and gone through the appeal.

4. It is significantly pointed out by Mr. D.K. Garg, learned counsel appearing for the appellant that the offences alleged against the respondent No. 2-accused are extremely serious. According to him, the girl was minor at the time of incident and further at least, considering the criminal record of the respondent No.2 -accused, which was also noted by the High Court in the impugned order, the High Court should not have granted bail to the respondent No.2-accused.

5. In our view, in the facts and circumstances of this case, it was inappropriate on the part of the High Court to grant bail to the respondent No. 2-accused. The High Court has not given any other reason though it has noted the pendency of

twenty five criminal cases against the respondent No. 2-accused. It is also reported that even today, the respondent No.2-accused is behind the bar for the offence punishable under Section 3(1) of the U.P. Gangster Act. Even the grant of bail by the High Court was of no significance since the accused even at the time of granting bail by the High Court was behind the bar for that offence under Section 3 (1) of the U.P. Gangster Act.

6. We do not think that it was appropriate on the part of the High Court to grant bail to respondent No.2-accused. We, therefore, set-aside the impugned order dated 21.10.2009 passed

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by the High Court and cancel the bail of the respondent No. 2-accused Aziz Ahmad. We make it clear that the observations made in this order shall not be viewed by the trial court as an expression of opinion on the merits of this case while deciding the case.

7. The appeal is allowed accordingly.

.....J.
[V.S. SIRPURKAR]

.....J.
[CYRIAC JOSEPH]

NEW DELHI
OCTOBER 4, 2010.