

(2015) 01 SC CK 0058

In the Supreme Court Of India

Case No : Criminal Appeal No. 91 of 2015 (Arising out of SLP (Crl) No. 9247 of 2013)

Mansoor Alam

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 110
Penal Code, 1860 (IPC) — Section 120B, 302, 307, 323, 34
Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 — Section 3(1)

Citation : (2015) 1 ACR 828 : (2015) 3 AJR 804 : (2015) 5 ALJ 249 : (2015) 89 ALLCC 637 : (2015) ALLMR(Cri) 1229 : (2015) 1 CCR 266 : (2015) CriLJ 3967 : (2015) 3 Crimes 256 : (2016) 1 NCC 295 : (2015) 2 RCR(Criminal) 154 : (2015) 1 SCALE 416 : (2015) 4 SCC 731 :

Hon'ble Judges : A.K. Goel, J.;T.S. Thakur, J.

Bench : Division Bench

Advocate : Nikhil Sharma, Tulika Prakash and Tanmay Agarwal, for the Appellant; Adarsh Upadhyay, Amit Kumar Singh, Harsh Vardhan Jha and G. Bhatia, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.K. Goel, J.—Leave granted.

2. This appeal has been preferred against the judgment and order dated 23rd April, 2013 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 6239 of 2010.

3. The Respondent Moni alias Mohd. Ahmad stands convicted Under Section 302/34/120B Indian Penal Code ("Indian Penal Code") in proceedings arising out of Case Crime No. 112 of 2006 Under Section 302/384/307/120-B Indian Penal Code, PS. Anwarganj, District Kanpur Nagar for causing death of Aftaab Alam on 3rd September, 2006 at 09.30 P.M. by firing bullet from country made pistol. The order of conviction and sentence was passed by the Additional Sessions Judge,

F.T.C. Court No. 3, Kanpur City dated 11th August, 2010 against which Criminal Appeal No. 6239 of 2010 has been filed by the Respondent before the Allahabad High Court. The said Respondent also filed an application for bail during pendency of the appeal. The High Court granted bail taking into account the contention that the deceased sustained two fatal injuries and rest of the injuries were on non vital parts and also having regard to the period of custody of the Respondent.

4. We have heard learned Counsel for the parties.

5. Learned Counsel for the Appellant-complainant pointed out that specific role has been attributed to the second Respondent in the FIR to the effect that he along with his brother came and fired shots from their country made pistols instantly causing the death of Aftaab Alam. The Appellant-complainant was a witness being PW-1 whose evidence has been duly accepted by the trial Court. The second Respondent had criminal antecedents which have not been taken into account even though the same were pointed out to the High Court. Our attention has been drawn to averments made in the counter affidavit dated 14th April, 2013 filed before the High court and document Annexure CA-1 mentioning that the following four cases were pending against the second Respondent apart from the cases pending against the co-accused:

S. No.

Case No.

Section

Police Station

1.

104/04

307, 323 Indian Penal Code

Anwarganj

2.

140/05

110 Code of Criminal Procedure

Anwarganj

3.

112/06

302, 384, 307, 120B Indian Penal Code

Anwarganj

4.

221/06

3(1) U.P. Gangster Act

Anwarganj

6. The matter came up for hearing after notice was issued and finding that Respondent No. 2 had failed to appear, bailable warrants were directed to be issued against Respondent No. 2. Letter dated 27th September, 2014 has been received from the trial Court stating that Respondent No. 2 is still in custody. It appears that he has not been able to furnish the bail bonds. The additional documents have been filed on behalf of the State. It has been pointed out that the second Respondent was facing trial in cases being FIR No. 46 of 2004 in Case Crime No. 104 of 2004 Under Section 323, 307 Indian Penal Code, PS Anwarganj, Kanpur Nagar and FIR No. 142 of 2006 in Crime Case No. 221 of 2006 Under Section 3(1) of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986. In Crime Case No. 140 of 2005 Under Section 110 Code of Criminal Procedure dated 22nd July, 2005, the Respondent was ordered to file a bond for Good Behaviour which he had filed on 12th September, 2012. A perusal of the impugned order of the High Court shows that the antecedents of Respondent No. 2 have not been taken into account. Respondent No. 2 has not furnished bail bond in pursuance of the order of the High Court and has continued to remain in prison. We are thus of the view that order granting bail, in the facts and circumstances, is not called for. There is no doubt that Respondent No. 2 appears to have undergone imprisonment for more than eight years, but the contention raised on behalf of the Appellant that the Respondent has criminal antecedents and direct role in the murder which render the order granting bail vulnerable cannot to be brushed aside.

7. Accordingly, without expressing any opinion on merits, we set aside the impugned order passed by the High Court granting bail to Respondent No. 2. However, we request the High Court to decide the appeal expeditiously and as far as possible within one year from the date of receipt of this order. It is made clear that if there is undue delay in hearing of the appeal, the Respondent will be at liberty to apply for bail again.