SUPREME COURT OF INDIA

Pritam

Vs.

Ashok

S.L.P. (Crl.) No. 2820-2821 of 2003

(Y. K. Sabharwal and D. M. Dharmadhikari JJ.)

16.07.2004

ORDER

1. Leave granted.

2. The impugned order of the High Court suspending the sentence and directing release of the accused-respondents on bail has been questioned by the de-facto complainant/appellant.

3. In brief, the facts are that in the afternoon, at about 2.00 p.m., on 8th August, 1998, brother of the appellant and his nephew were shot dead. According to the case of the prosecution, the bodies of the two persons were dragged by the accused. F.I.R. was lodged against the accused-respondents under Sections 147/148/149/302/201 I.P.C. read with Section 25 of the Arms Act. The accused were arrested in September, 1998. They were directed to be released on bail, pending trial, by the High Court in terms of order dated 13th September, 1999. That order was challenged by the appellant before this Court in Crl.A. No. 178/2000. This Court, after noticing the facts about the respondents being involved in the case of double murder where charge sheet had already been filed and the prayer for grant of bail to the co-accused having been denied, laid down that the High Court was duty bound to look into the gravity of the offence and the implication of the accused in the incident while considering an application for grant of bail. It was further noticed that the High Court had not looked into any such aspect. Having regard to the facts and circumstances of the case, this Court held that the High Court exceeded its jurisdiction in granting bail without even indicating any iota of reason for the same and in a serious offence of murder. The order dated 13th September, 1999 was set aside and bail cancelled. Now the respondents have been convicted for offence under Section 302/149 I.P.C. and for other offences as well. For the offence under Section 302/149 IPC, life imprisonment has been imposed.

4. The judgment of conviction against the respondents is based, inter alia, on the testimony of the two eye witnesses, the investigating officer and the medical testimony. We are, however, not going into the correctness or otherwise of the judgment and order of the Court of Session convicting and sentencing the respondents. The judgment of the Court of Session has been impugned by the respondents in Crl.A. No. 4573/2003 which is pending in the High Court.

Pending the decision of the appeal, in terms of the impugned order dated 7th March, 2003, the respondents have been directed to be released on bail.

5. The impugned judgment and order has been made by the High Court, primarily, relying upon the decision of this Court in Takht Singh & Ors. Vs. State of U.P. [9]. Takht Singh's decision was rendered on its own facts and circumstances, in particular, the fact that the appellants in the said case had made an application for suspension of sentence and bail, but the same was rejected by the High Court giving them opportunity to renew their prayer for bail after one year. After the expiry of one year, the second application was filed which was also rejected. The second rejection by the High Court was challenged. In this background, it was noticed that the appellants were already in jail for three years and three months and they were accordingly directed to be released on bail. We fail to understand how Takht Singh's case was relied upon by the High Court to pass the impugned order. It is evident that the High Court did not properly apply its mind to the facts of the case. It may be noticed that unlike Takht Singh's case, in the present case, the impugned order granting bail was made within about four months of the judgment and order of conviction and sentence passed by Session Court. No special reasons have been indicated in the order which, on the facts and circumstances of the case in hand, were necessary to be indicated having regard to the background of the case and gravity of the offence. In our view, the High Court exceeded in its jurisdiction in directing the release of the respondents on bail at this stage.

6. In this view, we set aside the impugned order and allow the appeals. The respondents/convicts shall forthwith surrender to custody. They would be free to file an application for suspension of sentence in case their appeals are not disposed of within a period of two years. In case such an application is filed, it would be decided on merits, uninfluenced by observations made above.