

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 374 /2022  
[@ SLP [CRL.] NO. 339/2022]

NITESH KUMAR SINGH

Petitioner(s)

VERSUS

STATE OF UP & ANR.

Respondent(s)

O R D E R

Leave granted.

We have heard learned counsel for parties.

The plea which we seek to examine is whether in the given factual scenario we should take the path, which we would normally be reluctant to choose, of cancelling the bail already granted by the High Court.

We may note that as per the impugned order the respondent NO.2 is stated to be a practicing lawyer at Ballia and was not named in the FIR originally which was initially instituted against four named accused with specific accusation of giving fire arm shot as a consequence of criminal conspiracy. What was recorded was there were two other unknown persons. In the course of investigation on the basis of CCTV footage, the identity was stated to have been established of those persons which included the respondent No.2.

The impugned order records that because the respondent No.2 was not named in the FIR but was found to be one of the two stated unknown persons, on the basis of CCTV footage with general observations of nature of accusations, severity of

punishment in case of conviction, reasonable apprehension of tampering with witnesses, having been recorded, the bail was granted. We issued notice on 07.02.2022 and found that the stand in the counter in substance was that the charge sheet/final report had been filed on 13.10.2021. This was found to be an unsatisfactory affidavit. The reason why we had been persuaded to issue notice was also recorded in order dated 12.01.2022 i.e. respondent No.2 having been granted bail was allegedly threatening witnesses, the High Court itself had issued notice for cancellation of bail. On 07.02.2022 we recorded three aspects on which we wanted the counter affidavit of the State of Uttar Pradesh to be specific:

- "a) the accused who was granted bail was allegedly threatening the witnesses ;
- b) the High Court itself had issued notice on an application for cancellation of bail (Annexure P/8), and
- c) that this was the second case against the accused under section 302, IPC."

The affidavit now filed acknowledges that respondent No. 2 has already been convicted and sentenced for imprisonment for life under Sections 302 and 506, IPC in earlier FIR No. 467/1998. In that context it has been stated that incident in question being second one, there should have been continued custody of respondent No. 2. The affidavit also states that the conduct of the co-accused Sabal Singh along with other co-accused Harish Paswan and Hari Singh insofar as threatening the witnesses is concerned, it has been verified that there

are endeavours of the co-accused to threaten the Pairokar/ witnesses with dire consequences and the application for cancellation of bail is also pending consideration. The remaining part of the affidavit deals with *prima facie* evidence against the respondent No.2.

In the conspectus of the matter, we are of the view that possibly the State prosecutor never pointed out the detailed facts to the High Court which was the bounden duty of the State, setting forth these aspects of the conduct of respondent No.2. Had they been so pointed out, we are sure that the order of the nature passed as the impugned order would not have been passed merely by referring to generalities.

We are unequivocally of the view that it is a fit case where the bail granted to respondent No.2 is liable to be cancelled. Respondent No.2 be kept in custody. Respondent No.2 is granted one week's time to surrender.

The appeal is allowed in the aforesaid terms leaving the parties to bear their own costs.

..... J.  
[SANJAY KISHAN KAUL]

..... J.  
[M.M. SUNDRESH]

NEW DELHI;  
MARCH 07, 2022

ITEM NO.19 Court 6 (Video Conferencing) SECTION II

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 (Cr1.) No(s). 339/2022

(Arising out of impugned final judgment and order dated 25-11-2021 in CR MBA No. 42615/2021 passed by the High Court Of Judicature At Allahabad)

NITESH KUMAR SINGH Petitioner(s)

VERSUS

STATE OF UP & ANR. Respondent(s)

(FOR ADMISSION and I.R. )

Date : 07-03-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s) Mr. Anupam Mishra, AOR  
Mr. Jenis V Francis, Adv.

For Respondent(s) Ms. Srishti Singh, AOR  
Mr. Raman Yadav, Adv.  
Mr. Syed Mehdi Imam, AOR

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

Leave granted.

The appeal is allowed in terms of the signed order, leaving the parties to bear their own costs.

Respondent No.2 is granted one week's time to surrender.

[CHARANJEET KAUR]  
ASTT. REGISTRAR-cum-PS

[POONAM VAID]  
COURT MASTER (NSH)

[ Signed order is placed on the file ]