

ITEM NO.25

COURT NO.16

SECTION II-B

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

Miscellaneous Application No. 1091/2024 in SLP(Crl) No. 15827/2023

(Arising out of impugned final judgment and order dated 04-01-2024 in SLP(Crl) No. No. 15827/2023 passed by the Supreme Court Of India)

KALIMAHMED @ KALIM MULLA MOHAMMAD HABIB KARIMI Petitioner(s)

VERSUS

THE STATE OF GUJARAT Respondent(s)

(IA No. 133625/2024 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 04-07-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE UJJAL BHUYAN
(VACATION BENCH)

For Petitioner(s) Mr. Ali Asghar Rahim, Adv.
Mr. Shekhar Kumar, AOR

For Respondent(s) Ms. Archana Pathak Dave, Sr. Adv.
Ms. Swati Ghildiyal, AOR
Ms. Devyani Bhatt, Adv.

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

1. This is a second Miscellaneous Application in a disposed of petition. As such, no miscellaneous application is maintainable in law in a disposed of petition. This position of law is well settled in the decision of **State of Uttar Pradesh Vs. Brahm Datt Sharma & Anr.** [(1987) 2 SCC 179, paragraph 10 of which reads as under :

"10. The High Court's order is not sustainable for yet another reason. Respondents' writ petition challenging the order of dismissal had been finally disposed of on 10-8-1984, thereafter nothing remained pending before the High Court. No miscellaneous application could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated 29-1-1986 he could have filed a separate petition under Article 226 of

the Constitution challenging the validity of the notice as it provided as separate cause of action to him. The respondent was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decided. The High Court had no jurisdiction to entertain the application as no proceedings were pending before it. The High Court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning.”

2. The applicant herein has a serious grievance with the State as regards his plea for remission is concerned. The applicant is a convict under the Prevention of Terrorism Act (POTA). It is true that he is undergoing sentence past 14 years. The main petition is pending before the High Court of Gujarat in the form of Special Criminal Application No. 970 of 2023. This petition before the High Court is now coming up for hearing on 3rd September, 2024.
3. However, Ms Archana Pathak Dave, the learned counsel appearing for the State informs that as on date the applicant herein has been released on parole for a period of eight weeks.
4. We may only request the High Court to give some priority to Special Criminal Application No. 970 of 2023 on 3rd September, 2024.
5. With the aforesaid, this Miscellaneous Application is disposed of.
6. Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(POOJA SHARMA)
COURT MASTER