ITEM NO.7 COURT NO.14 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 for Special Leave to Appeal (Crl.) No.14372/2024

[Arising out of impugned final judgment and order dated 27-08-2024 in CRA No. 5944/2022 passed by the High Court of Judicature at Allahabad]

MOHAMMAD ARIF Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH Respondent(s)

IA No. 239426/2024 - EXEMPTION FROM FILING O.T.)

WITH

SLP(Crl) No. 16787/2024 (II)

(IA No. 277782/2024 - EXEMPTION FROM FILING O.T.)

Date : 08-01-2025 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) Mr. Shoaib Khan, AOR
Mr. A.k Ansari, Adv.
Ms. Sheeba Khan, Adv.
Ms. Aditi Gautam, Adv.

For Respondent(s) Ms. Ruchira Goel, AOR
Mr. Sharanya Sinha, Adv.
Ms. Shweta Yadav, Adv.
Ms. Ritika Mahuli, Adv.

Mr. Ajay Singh, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1. Since the issues involved in both the captioned petitions are the same and the two petitioners are co-convicts of a common trial those were taken up for hearing analogously and are being disposed of by this common order.

2. The petitioners were put to trial for the offence of murder etc. In all seven persons were put to trial including the two petitioners herein. At the end of the trial all seven stood convicted by the trial court. They all are before the High Court with their respective criminal appeals. We are informed that out of seven, four have been ordered to be released on bail pending their appeals by suspending the substantive order of sentence of life imprisonment passed by the trial Court. Two are before us i.e. the petitioners who have been declined bail pending their criminal appeals.

3. It appears from the materials on record, more particularly, the reasons assigned by the High Court with regard to the other co-convicts, whose sentence has been suspended that the two petitioners herein were armed with fire arms and as per case of the prosecution they fired shots on the two deceased, one died on

the spot and the another succumbed to the injuries after couple of days. The case is one of double murder.

4. We take notice of the fact that the criminal appeal(s) filed by the petitioners herein is of the year 2022. The appeal will not be taken up for hearing in the near future. We are also conscious of the fact that both the petitioners herein have undergone almost 10 years of imprisonment. However, we should not overlook the fact that the sentence is not for a fixed term but the same is of life imprisonment.

5. Suspension of sentence of life imprisonment is not automatic like suspension of sentence of a fixed term. Even if, a sentence is for a fixed term but there are exceptional circumstances emerging from the record of the case, the Court may decline to suspend the sentence in exercise of its powers under Section 389 of the Cr.P.C.

6. The learned counsel appearing for the petitioners vehemently submitted that this Court in two of its decisions, (1) Saudan Singh Vs. State of Uttar Pradesh reported in 2022 SCC OnLine SC 697 and (2) SLP (Crl) No. 529 of 2021 titled "Sonadhar vs. State of Chattisgarh" decided on 15-9-2022 has said that all those convicts who have completed 10 years of sentence and appeal is not in proximity of hearing and further if there are no extenuating circumstances, they should be enlarged on bail. The

learned counsel laid much emphasis on the observations made by this Court in Sonadhar (supra) which reads thus:-

> **"The Allahabad High Court where the pendency is the largest has also carried out an exercise showing 2853 appeals pending before the High Court where 3234 convicts are in jail for more than 10 years. Out of these, 385 convicts have undergone more than 14 years of custody. We have to keep in mind the objective of de-cluttering the jails where without hearing of the appeals, convicts are in custody."**

7. He also placed strong reliance on the decision in the case of Saudan Singh (supra), more particularly, paras 9 and 10 respectively therein, which read thus:-

> **"9. The second category of cases can be one where the person has served out more than 10 years of sentence. In these cases also at one go bail can be granted unless there are any extenuating circumstances against him.**
>
> **10. We are quite hopeful that the High Court will adopt the aforesaid practice and thus prevent the Supreme Court to be troubled with such matters."**

8. We also heard Ms.Ruchira Goel, the learned counsel appearing for the State of Uttar Pradesh. The learned counsel appearing for the State has vehemently opposed these petitions. She submitted that just because the petitioners have undergone 10 years of sentence by itself would not entitle them to seek suspension of sentence of life imprisonment pending their criminal appeal before the High Court.

9. She laid much emphasis on the fact that the case is one double murder.

10. Having regard to the aforesaid, we are not persuaded to exercise our discretion in favour of the petitioners. At the same time, we should also not forget that the criminal appeal before the High Court is of the year 2022 and it is not likely to be taken up in near future. Considering the fact that the other co-convicts are already on bail and also considering the fact that the petitioners herein have undergone almost 10 years of sentence, we make a fervent request to Hon'ble the Chief Justice of Allahabad High Court to assign the Criminal Appeal No. 5944 of 2022 and allied appeals of the other co-convicts to be placed before the appropriate Bench with a request that the same may be taken up for hearing at the earliest and as far as possible dispose of them within a period of six months from the date of receipt of the writ of this order.

11. We clarify that we have otherwise not expressed any opinion on the merits of the case. The criminal appeals shall be decided on their own merits, in accordance with law.

12. By any chance, if the criminal appeal is not taken up for hearing within next six months, we reserve the liberty for the petitioners herein to come back to this Court.

13. In pursuance of our Orders dated 25.10.2024 and 10.12.2024,

the two petitioners were ordered to be released on interim bail. As we are now not entertaining these petitions, they shall surrender within a period of 8 days from today.

14. In the aforesaid, the petitions stand disposed of.

15. Pending application(s), if any, stands disposed of.

(CHANDRESH)
COURT MASTER (SH)

(POOJA SHARMA)
COURT MASTER (NSH)