



**IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION (CRIMINAL) NO. 7857 OF 2022

Ashish Mishra *alias* Monu

..... Petitioner

Versus

State of U.P.

..... Respondent

ORDER

1. The present Special Leave Petition is directed against the judgement and order dated 26.07.2022 passed by the High Court of Judicature at Allahabad, Lucknow Bench, whereby Petitioner's bail application under Section 439 of the Code of Criminal Procedure of 1973 has been rejected.

2. The alleged incident of crime in this case has already been the subject matter of two separate proceedings before this court – *First, Re: Violence in Lakhimpur Kheri (UP.) Leading to Loss of Life*¹ whereby an SIT headed by a retired High Court Judge was constituted to monitor the investigation in the concerned incident and; *second Re: Jagjeet Singh v. Ashish Mishra*² whereby this court set aside the erstwhile order granting bail to the Petitioner and remitted the matter for reconsideration which resulted in the impugned decision. Hence, at this juncture, it is not imperative to delve deep into the factual matrix, and it suffices to succinctly mention the key facts to set out the context of the present proceedings.

1 (2022) 9 SCC 337.

2 (2022) 9 SCC 321.

3. It is stated that on the fateful day, a wrestling contest had been organized by the Petitioner which was supposed to be attended by the Petitioner's father, Mr. Ajay Mishra who is the Union Minister of State for Home and Mr. Keshav Prasad Maurya, the Deputy Chief Minister of the State of Uttar Pradesh. The proposed route which was to be taken by these persons had to be changed because of the protests held by farmers at the incident spot, which is alleged to have irked the Petitioner and his associates, leading to the alleged occurrence. Consequently, two separate FIRs bearing FIR No. 219 of 2021 and FIR No. 220 of 2021 at PS Tikonia, District Kheri, U.P. were lodged by the parties involved in the incident against each other.

4. FIR No. 219 of 2021 was registered by the Informant (Jagjeet Singh) against the Petitioner and his associates, alleging that they committed the criminal offense as a retaliation to the protests organized by the farmers on various issues which also included the adverse public comments made by Petitioner's father. It was specifically alleged that Petitioner and his co-accused intentionally ran over the farmers returning to their respective homes and killed four innocent farmers and a journalist. It was stated that the vehicle carrying the Petitioner fell into a ditch as it became uncontrollable due to high speed. Consequently, the Petitioner is alleged to have run away from the spot by escaping to the nearby sugarcane fields under cover of open fire of weapons.

5. On the other hand, FIR No. 220 of 2021 was lodged by one Sumit Jaiswal, who is stated to be the Petitioner's aide and also the co-accused in FIR No. 219 of 2021. He has alleged that at the time of the incident, Petitioner and his associates were on their way to welcome the dignitaries for the wrestling competition when they encountered the protesting farmers on the spot. It is stated that the farmers stopped the vehicle in which the complainant was travelling and started assaulting the occupants. The complainant has further alleged that he somehow managed to escape the assailants' clutch while his other co-occupants continued to be assaulted. Three persons died at the spot as a result of the said assault.

6. Hence, for the same incident we are confronted with two completely different narratives which necessitates a full-blown trial to scourge out the actual facts. Regardless, we must be cognizant that the unfortunate grave incident is reported to have led to the loss of eight lives, consisting of four protesting farmers, one journalist and the other three who were part of the Petitioner's convoy.

7. During the course of hearing, this court via order dated 26.11.2022 took note of the fact that the chargesheet had been filed and directed the Trial Court to decide on framing of charges in the case registered against the Petitioner and his co-accused. Consequently, charges have been framed against the Petitioner under Sections 147, 148, 307 r/w 149, 326 r/w 149, 302 r/w 149, 120B, 427 of Indian Penal Code of 1860; under Sections 30, 5 r/w 27, 3 r/w 25 of Arms Act of 1959; and under Section 177 of Motor

Vehicles Act of 1988. It must be noted that charges have also been framed against the remaining accused in FIR No. 219 of 2021.

8. Additionally, the State has informed us that charges have been framed in FIR No. 220 of 2021 against Accused No(s). 1 to 3, namely, (i) Guruwinder Singh, (ii) Kamaljeet Singh, (iii) Gurupreet Singh under Sections 143, 147, 148, 323 r/w 149, 325 r/w 149 , 427, 436, 504, 302 r/w 149 of Indian Penal Code of 1860; and Accused No. 4, namely, (iv) Vichitra Singh under Sections 109, 114, 504, 427, 436 of Indian Penal Code of 1860. It must be noted that further investigation to identify the involvement of other than the four accused-farmers is still going on.

9. Afterwards, this court via order dated 12.12.2022, had sought to find out from the First Additional Sessions Judge at Lakhimpur Kheri, U.P. as to how much time is likely needed in the normal course to conclude the trial in the present case, without compromising with the schedule of other pending or prioritised matters. In compliance thereto, a report was submitted by the learned Trial Judge, the relevant extracts of which are as follows –

“5. There are 208 oral witnesses, 171 documentary evidence, 17 scientific evidence, 07 physical evidence and 24 Forensic Science Laboratory reports have been proposed by prosecution in the chargesheet of Session Trial No.44/2022 State versus Ashish Mishra@Monu and Ors Case Crime No.219/2021 u/s 147, 148, 149, 307, 326, 34, 302, 120B, 427, 201 IPC and section 3/25, 5/27 and 30 Arms Act and section 177 M.V. Act.

x-x-x-x-x

8. Pursuant to proposed oral evidence, documentary evidence, scientific evidence, physical evidence and F.L. report and 04 separate advocates of accused persons, in the case of no external circumstances arising in the case, normally minimum 05 years is likely to be taken in the disposal of the session trial.”

10. Mr. Mukul Rohatgi, learned Senior Counsel for the Petitioner, argued that the Informant's version in FIR No. 219 of 2021 in which Petitioner is arrayed as an accused, was based on hearsay as the concerned Informant was not a witness to the incident. His argument was hinged on the premise that since the narration in FIR No. 220 of 2021 was based on the version given by an injured witness, it should be treated more credible than the opposite one. He strenuously highlighted the contents of the Trial Court's letter in respect of the time required for the conclusion of the trial and argued that Petitioner should not be kept in custody for an indefinite period. Mr. Rohatgi was supported by Mr. Siddhartha Dave, learned Senior Counsel who is also appearing on behalf of Petitioner.

11. Ms. Garima Prashad, learned Additional Advocate General appearing on behalf of the State strongly contested the prayer for the grant of bail on the ground that a strong prima-facie case has been made out against the Petitioner. Mr. Dushyant Dave, learned Senior Counsel appearing on behalf of the Informant in FIR No. 219 of 2021, very vehemently opposed the prayer for bail. Mr. Dave chronologically cited multiple decisions including the Constitution Bench verdict in ***Bihar Legal Support Society v. The***

Chief Justice of India³ to establish that this court has taken a consistent stand to refuse bail in cases involving heinous crimes such as pre-mediated murder as alleged in the instant case. Furthermore, he argued that the Petitioner commanded tremendous influence in the jurisdiction where the incident had occurred and that if granted bail, the trial would never be able to see the light of day.

12. We have heard both the parties at considerable length and have perused the documents brought on record.

13. We are conscious of the grave allegations levelled against the Petitioner but we must also acknowledge that principles of procedural fairness require these allegations to be proven in trial proceedings. In the present case, charges have been framed, and Petitioner is in custody for more than a year. In view of the large volume of oral and documentary evidence, which the prosecution is entitled to lead in both the cases, coupled with the defence evidence, if any, trial cannot be expected to be concluded that early.

14. Similar is the fate of the undertrials in the contrasting version wherein four farmers who are accused of inflicting fatal injuries to three associates of the Petitioner are incarcerated. We are further informed by the learned State Counsel that their respective bail applications are pending in the High Court.

15. At the same time, we find ourselves in agreement with the apprehensions raised regarding fair trial and the doubts surrounding the impartiality of the conduct of law enforcement agencies. We are, therefore, of the view that it is imperative to balance the rights of Petitioner's liberty emanating under Article 21 vis-a-vis the State's right to ensure a fair and proper trial and safeguard the legitimate outcry of the victim(s) of crime.

16. In view of two diametrically opposite versions, both supported by their respective investigation reports, we are not inclined to express any final opinion as regard to the Petitioner's right to seek regular bail at this stage. Rather, we undertake to keep these proceedings pending by issuing certain interim directions, in furtherance of interest of justice and in a way on an experimental basis, to adjudge as to whether there is any substance in the apprehensions expressed on behalf of the State and the Informant.

17. We, thus, deem it appropriate to issue the following interim directions at this stage:

- i.** The Petitioner is directed to be released on interim bail initially for a period of eight weeks subject to his furnishing bail bonds to the satisfaction of the Trial Court;
- ii.** With a view to ward off any direct or indirect influence on the material witnesses who are yet to depose, the Petitioner is directed to leave the State of Uttar Pradesh within one week from the date of his release on interim bail;

- iii.** The Petitioner shall not stay in the State of Uttar Pradesh or in NCT of Delhi during the period of interim bail;
 - iv.** The Petitioner shall disclose the place of his residence to the Trial Court as well as the jurisdictional police station where he would stay during the period of interim bail, within one week of his release. He shall mark his presence in the jurisdiction police station once in a week;
 - v.** The Petitioner shall surrender his passport with the Trial Court within one week of his release on interim bail;
 - vi.** The Petitioner shall not enter the State of Uttar Pradesh except to attend the trial proceedings;
 - vii.** Any attempt made by the Petitioner, his family or supporters to influence or threaten the witnesses, directly or indirectly, shall entail cancellation of the interim bail;
 - viii.** The prosecution, SIT, Informant or any family member of the victims of the crime will be at liberty to promptly inform this Court of any incident of misuse of the concession of the interim bail;
 - ix.** The Petitioner shall appear before the Trial Court on every date of hearing and no adjournment shall be sought on his behalf. If the Petitioner is found involved in prolonging the trial, it shall be taken as a valid ground to cancel the interim bail.
- 18.** As noticed earlier, there are two separate FIRs with different narratives but the place of occurrence and substratum of the incident are

the same. The question as to who were the aggressors or responsible for the unfortunate ghastly incident would be ascertained only after a full-fledged trial. As a necessary corollary we, in exercise of our suo-moto constitutional powers, extend the benefit of interim liberty to the under-trial accused involved in the other version also, namely, FIR No. 220 of 2021. Consequently, it is directed that the following four accused namely:

1. Guruwinder Singh, S/o. Gurmej Singh, R/o. Mukarimpur, Post Aliganj, PS Gola Dist., Kheri;
2. Kamaljeet Singh; S/o. Iqbal Singh, R/o. Panchhi Farm Babaura, PS Palia Dist. Kheri;
3. Gurupreet Singh; S/o. Kulwinder Singh, R/o. Vanshi Nagar, PS Palia, Dist. Kheri; and
4. Vichitra Singh, s/o. Lakhwinder Singh, R/o. Gogaon, PS Bheeta, Dist. Kheri;

who have been arrested and whose bail applications are now stated to be pending before the High Court of Judicature at Allahabad, are ordered to be released on interim bail till further orders, subject to their furnishing bail bonds to the satisfaction of the Trial Court.

19. The learned Trial Court is directed, in the interest of justice, to prioritize the deposition of protected witnesses, followed by other crucial witnesses. All the accused persons and their counsel will ensure full cooperation to the Trial Court and no adjournment shall be granted by the Trial Court merely on the asking of the undertrials or their counsels.

20. The Trial Court shall send progress reports to this Court after every date of hearing, along with details of witnesses examined on each date. The Registry is directed to list the matter without any delay for appropriate directions as soon as a report is received from the Trial Court.

21. The Trial Court shall also be at liberty to move this Court, if need be, for issuance of suitable directions to the prosecution, accused or any other stakeholder so that the trial is not hampered in any manner till it reaches a logical conclusion.

22. It is made clear that we have not expressed any views on merits of the versions contained in FIR No. 219 of 2021 or FIR No. 220 of 2021; both dated 04.10.2021 and registered at Police Station- Tikonia, District – Kheri.

23. Post the matter for further consideration on 14.03.2023.

..... J.
(SURYA KANT)

..... J.
(J.K. MAHESHWARI)

NEW DELHI

DATED : 25.01.2023

ITEM NO.1501
(For Orders)

COURT NO.9

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.7857/2022

(Arising out of impugned final judgment and order dated 26-07-2022 in CRMBA No. 13762/2021 passed by the High Court of Judicature at Allahabad, Lucknow Bench)

ASHISH MISHRA ALIAS MONU

Petitioner(s)

VERSUS

STATE OF U.P.

Respondent(s)

([HEARD BY : HON'BLE SURYA KANT AND HON'BLE J.K. MAHESHWARI, JJ.])

Date : 25-01-2023 This petition was called on for pronouncement of order today.

For Petitioner(s)

Mr. Sidharth Dave, Sr. Adv.
Mr. Pankaj Sharma, Adv.
Mr. Achal Kumar Mishra, Adv.
Mr. Ashutosh Kumar Sharma, Adv.
Mr. Rajeev Kumar Dubey, Adv.
Mr. Kshitij Mudgal, Adv.
Ms. Vidhi Thakker, Adv.
Mr. Kartik Arora, Adv.
Ms. Ayushi Mittal, Adv.
Mr. T. Mahipal, AOR

For Respondent(s)

Mr. Dushyant Dave, Sr. Adv.(N.P.)
Mr. Prashant Bhushan, AOR (N.P.)
Mr. Rahul Gupta, Adv.
Mr. Alice Raj, Adv.
Mr. Akshat Malpani, Adv.
Ms. Ayushi Gaur, Adv.

Ms. Garima Prashad, AAG
Ms. Ruchira Goel, AOR

Hon'ble Mr. Justice Surya Kant pronounced the Order of the Bench comprising His Lordship and Hon'ble Mr. Justice J.K. Maheshwari.

We, thus, deem it appropriate to issue the following interim directions at this stage:

- i. The Petitioner is directed to be released on interim bail initially for a period of eight weeks subject to his furnishing bail bonds to the satisfaction of the Trial Court;
- ii. With a view to ward off any direct or indirect influence on the material witnesses who are yet to depose, the Petitioner is directed to leave the State of Uttar Pradesh within one week from the date of his release on interim bail;
- iii. The Petitioner shall not stay in the State of Uttar Pradesh or in NCT of Delhi during the period of interim bail;
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- vi. The Petitioner shall not enter the State of Uttar Pradesh except to attend the trial proceedings;
- vii. Any attempt made by the Petitioner, his family or supporters to influence or threaten the witnesses, directly or indirectly, shall entail cancellation of the interim bail;

viii. The prosecution, SIT, Informant or any family member of the victims of the crime will be at liberty to promptly inform this Court of any incident of misuse of the concession of the interim bail;

ix. The Petitioner shall appear before the Trial Court on every date of hearing and no adjournment shall be sought on his behalf. If the Petitioner is found involved in prolonging the trial, it shall be taken as a valid ground to cancel the interim bail.

As noticed earlier, there are two separate FIRs with different narratives but the place of occurrence and substratum of the incident are the same. The question as to who were the aggressors or responsible for the unfortunate ghastly incident would be ascertained only after a full-fledged trial. As a necessary corollary we, in exercise of our suo-moto constitutional powers, extend the benefit of interim liberty to the under-trial accused involved in the other version also, namely, FIR No. 220 of 2021. Consequently, it is directed that the following four accused namely:

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who have been arrested and whose bail applications are now

stated to be pending before the High Court of Judicature at Allahabad, are ordered to be released on interim bail till further orders, subject to their furnishing bail bonds to the satisfaction of the Trial Court.

List the matter on 14-03-2023.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(PREETHI T.C.)
COURT MASTER (NSH)

(Signed Order is placed on the file)