

ITEM NO.1

COURT NO.6

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Criminal Appeal No.679/2015

ABU SALEM ABDUL KAYYUM ANSARI

Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA

Respondent(s)

([FOR DIRECTIONS/ORDERS] )

WITH

Cr1.A. No. 681/2015 (II-A)

Cr1.A. No. 2145/2017 (II-A)

Cr1.A. No. 180/2018 (II-A)

Cr1.A. No. 1851/2019 (II-A)  
(IA No. 172565/2019 - GRANT OF BAIL)

Date : 21-04-2022 This appeal was called on for hearing today.

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

For Appellant(s)

Mr. Rishi Malhotra, AOR  
Mr. Utkarsh Singh, Adv.

Mr. S. Hari Haran, Adv.  
Mr. Vikash Singh, AOR  
Ms. Prapti A., Adv.

Mr. Sanjay Mani Tripathi, Adv.  
Mr. Kamal Kant Tripathi, Adv.  
Ms. Anu Gupta, AOR  
Mr. Ali Jethmalani, Adv.

Mr. Anand Grover, Sr. Adv.  
Ms. Tripti Tandon, Adv.  
Mr. Satbir Singh Pillania, Adv.  
Dr. Sushil Balwada, AOR  
Mr. Sandiv Kalia, Adv.  
Mr. Somvir Deshwal, Adv.  
Mr. Satish Hooda, Adv.  
Mr. Nand Ram, Adv.

Mr. Satish Pandey, AOR

For Respondent(s) Mr. K. M. Natraj, ASG  
Mr. S. S. Ray, Adv.  
Mr. Pranay Rajan, Adv.  
Ms. Apoorav Kurup, Adv.  
Mr. Ritwiz Rishab, Adv.  
Mr. Amrish Kumar Sharma, Adv.

Mr. Mayank Pandey, Adv.  
Mr. Shailesh Madiyal, Adv.  
Mr. Sachin Sharma, Adv.  
Mr. Sanjay Kumar Tyagi, Adv.  
Mr. Rajesh Kr. Singh, Adv.  
Mr. Arvind Kumar Sharma, AOR  
Mr. Mukesh Kumar Maroria, AOR

Mr. Sachin Patil, AOR  
Mr. Rahul Chitnis, Adv.  
Mr. Aaditya A. Pande, Adv.  
Mr. Geo Joseph, Adv.  
Ms. Shwetal Shepal, Adv.

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

On 02.2.2022 learned counsel for the appellant had made a four fold submission as recorded in that Order. The first submission arose out of a plea that the judiciary should also honor the solemn sovereign assurance given by the State to the Court in Portugal while seeking extradition of the appellant (on 17.12.2002 and 25.5.2003). The plea thus was that the imprisonment term cannot extend beyond 25 years as per the assurance given even though the TADA Courts said it was not bound by the assurances as the judicial system was independent of the executive. His submission was that even if the TADA Court does not have the power, this Court can pass necessary orders based on an affidavit to be filed by the Central

Government/ prosecuting agencies.

On this aspect learned counsel for the appellant had submitted that the third and fourth point i.e. arising from the consequences of Portugal Courts withdrawing permission for extradition on account of breach of the solemn sovereign assurance given and the merits of the controversy may not be required to be urged. The second plea was as to whether there should be a period of set off i.e. the period of detention under the Portugal authorities should be taken into account while calculating the period of 25 years.

It was in view of these circumstances and in a fair stand taken by the counsel for the appellant that we have called upon the authorities to file an affidavit.

The affidavit(s) filed did not meet the requirement of the query posed except to the extent it is stated that insofar as the period of set off is concerned, the appellant is not entitled. That is thus an issue to be debated before this Court.

On the first issue, we were constrained to call upon the Home Secretary to file an affidavit as clarity was not forthcoming. The affidavit has finally been filed, affirmed on 18.4.2022.

The affidavit seeks to emphasis that it was a dastardly act conducted with pre-meditation in which the appellant played a very active role and he was absconding and brought back to India under the Extradition Act, 1962. These powers are stated to be executive powers and would bind the executives of the respective States but the judiciary, as the Constitution of India envisages, is independent in deciding the cases including criminal cases in accordance with the law applicable.

Paragraph 6 of the affidavit refers to the assurances given vide letter dated 17.2.2002 as a solemn assurance to the Government of Portugal by the Government of India. Paragraph 7 states:-

"It is respectfully submitted that the Government of India is bound by the assurance dated 17.12.2002. The period of 25 years which is mentioned in the assurance will be abided by the Union of India at an appropriate time subject to the remedies which may be available."

What we do not appreciate in the same is the ending of the sentence which is underlined. This is so as once it is stated that the assurance has been given and the Government abides by the same, there is nothing more or less to be said. No doubt it is for the Courts to take a view as to the effect of that assurance. Let us only say that this is the appropriate time to take a call for us on the issue and thus the sentence is superfluous.

We also say so in view of the further averments in the affidavit that the occasion for Union of India honouring the assurance will arise only when period of 25 years is to expire. We have to take a call on the effect of that assurance and we cannot postpone the hearing of the appeal on that basis nor is it permissible for the Government to say on an affidavit that the appellant cannot raise this argument. The extradition of the appellant was on this assurance and as a convict certainly he is entitled to raise this issue of a solemn sovereign assurance for the judiciary to consider its effect. It is neither "premature" nor "based on a hypothetical surmises".

The affidavit goes on to state that it is legally untenable for the appellant to club the assurance with the merits of the case

and he must argue the appeal on the merits of the case. Thereafter it is stated that "this Hon'ble Court may decide the appeal on merits".

As to what this Court has to do or not to do is for the Court to take a call. We do not appreciate the tenor of the affidavit. If the convict seeks to accept his guilty in his conviction it cannot be said that the Court must hear the appeal on merits. For what purpose, we may say?

It is akin to a plea of a person seeking to only argue on the issue of sentence.

For our clarification we have asked the learned counsel for the appellant and he says that his third and fourth pleas thus stand withdrawn as urged in the proceedings recorded earlier before us and in view of the assurance, he only seeks to submit that the sentence should be 25 years in terms of the solemn sovereign assurance. We will consider that aspect.

In that behalf, learned counsel for the appellant seeks to make submissions.

The other point is the issue of set off also which will have to be debated before us.

Learned ASG seeks an accommodation to address on the second point while learned counsel for the appellant has to address us on both the first and second point as framed today.

List CrI. A. No. 679/2015 & CrI. A. No. 180/2018 on 05<sup>th</sup> May, 2022 at the end of miscellaneous matters.

Learned counsel for the appellant states that he will not take more than 30 minutes to address on both the issues. We do not

expect State to take more than that much time.

Cr1.A. No. 681/2015, Cr1.A. No. 2145/2017 & Cr1.A. No.1851/2019

Learned counsel for the parties state that these matters are arising from the same crime number as Criminal Appeal No.180/2018 but otherwise they were tried separately and thus had to be heard in its own course. The matters are de-tagged accordingly. List these matters on the regular board on their own turn.

(RASHMI DHYANI)  
COURT MASTER

(POONAM VAID)  
COURT MASTER