

ITEM NO.105

Court 6 (Video Conferencing)

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(s). 679/2015

ABU SALEM ABDUL KAYYUM ANSARI

Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA

Respondent(s)

WITH

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

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

(IA No. 126781/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

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

(IA No. 10919/2018 - CLARIFICATION/DIRECTION

IA No. 10921/2018 - EXEMPTION FROM FILING O.T.

IA No. 10922/2018 - INTERVENTION/IMPLEADMENT

IA No. 65827/2018 - PER TO WITHDRAW CRLMP

IA No. 13199/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 10920/2018 - PERMISSION TO FILE LENGTHY LIST OF DATES)

Cr1.A. No. 1851/2019 (II-A)

(IA No. 172568/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 172571/2019 - EXEMPTION FROM FILING O.T.

IA No. 172565/2019 - GRANT OF BAIL)

Date : 02-02-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s)

Mr. S. Hariharan, Adv.

Mr. Vikash Singh, AOR

Ms. Anu Gupta, AOR

Mr. Sandiv Kalia, Adv.

Mr. Satbir Singh Pllania, Adv.

Mr. Vikram Singh, Adv.

Mr. Somvir Deswal, Adv.

Mr. Nand Ram, Adv.

Dr. Sushil Balwada, AOR

Mr. Emamuddin Azmi, Adv.

Mr. Sunil Prem Lalla, Adv.  
Mr. Atique Rahman Siddiqui, Adv.  
Mr. Anand S Jondhale, Adv.  
Ms. Soneya Advani, Adv.  
Mr. Satish Pandey, AOR

Mr. Rishi Malhotra, AOR

For Respondent(s) Mr. Sanjay Kumar Tyagi, adv.  
Mr. M. Malhotra, Adv.  
Mr. Rajesh Kumar Singh, Adv.  
Mr. Sachin Sharma, Adv.  
Mr. Mukesh Kumar Maroria, AOR  
Mr. Arvind Kumar Sharma, 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

Applications for exemption from filing C/C of the impugned judgment, permission to file lengthy list of dates, permission to file additional documents/facts/annexures are allowed in respective matters.

No orders are required on application for impleadment in Criminal Appeal No. 180/2018 and the same is disposed of accordingly.

I.A. No. 65827/2018 to withdraw I.A. No. 10919/2018 (application for clarification/direction) is allowed and I.A. No. 10919/2018 is dismissed as withdrawn accordingly.

Learned counsel for the appellant-accused (in

Criminal Appeal No. 679/2015) has taken us to the list of dates. He makes four-fold submissions:

1) The stand of the Government of India/State Government (three appeals have been prosecuted by the State while two other by the C.B.I.) vis-à-vis the solemn sovereign assurance given by them to the Court in Portugal while seeking extradition of the appellant (on 17.12.2002 and 25.05.2003). In a nutshell it is his submission 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. He submits 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. Learned counsel for the State submits that by and large they will follow the guidance of the Central Government in this behalf but we believe in any case the Central Government/prosecuting agencies may discuss this issue with the State Government to file an appropriate affidavit before us.

2) The period of set-off, as according to the learned counsel for the appellant(s) he was detained on 18.09.2002 by the Portugal authorities on account of the look out notice, that should be the reckoning

time and not when he was released from the Portugal Court and taken into custody by the Indian authorities on 12.10.2005.

3) The consequences of Portugal Courts withdrawing he permission for extradition on account of breach of the solemn sovereign assurance given to them.

4) The Merits of the controversy.

Learned counsel submits that it may be possible to resolve these appeals if a reasonable stand is taken at least on the first aspect and on the second aspect, also the authorities may take a stand or in the alternative he will endeavour to persuade the Court.

We are of the view that this is a fair stand by counsel for the appellant and thus call upon the prosecuting agencies/Union of India(as the assurance was given on behalf of the Union of India by the then Deputy Prime Minister) to take a stand both on the first and the second aspect.

At request four weeks' time is granted for the said purpose.

List in the category of 'Miscellaneous matters' for directions on 08.03.2022.

[CHARANJEET KAUR]  
ASTT. REGISTRAR-cum-PS

[POONAM VAID]  
COURT MASTER (NSH)