

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1664 OF 2014
(ARISING OUT OF SLP (Crl.) NO. 2930 OF 2013)

SUNIL KUMAR

APPELLANT

Vs.

VIPIN KUMAR AND ORS.

RESPONDENTS

J U D G M E N T

V.Gopala Gowda, J.

Leave granted.

2. This appeal is filed by the appellant questioning the correctness of the judgment and final Order dated 18.02.2013 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 2684 of 2009 urging various facts and legal contentions in justification of his claim.

3. Necessary relevant facts are stated hereunder to appreciate the case of the appellant and also to find out whether the appellant is entitled for the relief as prayed for in this appeal.

4. It is the case of the prosecution that the appellant, who was at the time of the incident, studying in an engineering college at Noida, happened to be at Shikarpur crossing within the police station Kotwali Nagar. At about 10 a.m. on 27th June 2003, it was then that the convicted respondent nos. 2 and 3 dragged him into their house and began to assault him. Hearing the cries, the appellant's father Shri Khem Chand and brother Shri Rajeev would arrive at the scene to his rescue. In the scuffle which ensued, both the father and the brother of the appellant got injured which led to the consequential death of the appellant's brother Rajeev. After the FIR and follow-up investigation by police, charge sheets were submitted by the police subjecting the convicted respondent nos. 2 and 3 to trial under Section 302 read with Section 34, Section 307 read with Section

34 of IPC and for offences under Section 4 read with Section 25 of the Arms Act.

5. The Additional District and Sessions Judge, Bulandshahr on 16.4.2009, convicted and sentenced the respondent nos. 2 and 3 to various terms of imprisonment in Sessions trial Nos. 985, 987 and 988 of 2003.

6. In the counter version of the matter, the convicted respondent nos. 2 and 3, while admitting the date, time and place of the incident, claimed that the appellant and his deceased brother, Rajeev had barged into their house and attempted to sexually abuse a lady in their house namely Smt. Kajal. This very criminal behaviour of the appellant and his deceased brother gave rise to scuffle between the parties which resulted in the death of the brother of the appellant.

7. On the basis of the complaint of the respondents, the appellant was put to trial under different charges in cross Sessions trial No. 524 of 2005. The

appellant was however acquitted from offences punishable under Section 376/511, 323 and 324 of IPC.

8. The convicted respondent nos. 2 and 3 filed Criminal Appeal No. 2684 of 2009 against their conviction by the Additional District and Sessions Judge vide Order dated 16.4.2009. A Criminal Revision No. 1744 of 2009 was also filed by Smt. Kajal against the acquittal of the appellant from charges under Section 376 I.P.C. The Criminal Appeal and the Criminal Revision are still pending for disposal before the High Court.

9. In the meanwhile, the first application for bail moved by the convicted respondent nos. 2 and 3 in the above Criminal Appeal No. 2684 of 2009 was rejected by the Division Bench of the High Court on 27.7.2011.

10. However, the subsequent application of the convicted Respondent nos. 2 and 3 in the same Criminal Appeal No. 2684 of 2009 was allowed by the High Court vide Order dated 18.2.2013 requiring them to furnish individually, a personal bond of Rs.1 lakh

with two sureties each, to the satisfaction of the trial court.

11. It is against this enlargement of the respondent nos. 2 and 3 on bail by the High Court, that the appellant has appealed before us.

12. It has been contended by the learned senior counsel appearing on behalf of the State that the High Court erred in granting bail to the respondents in exercise of power under Section 389 of CrPC without assigning any legal and acceptable reason being oblivious to the nature and gravity of the offence, the evidence being led thereof and the punishment awarded by the trial court.

13. It was further contended by the learned senior counsel that the deceased and the father of the appellant were assaulted with repeated blows on chest, head and shoulder. This is to say that the deceased was assaulted mercilessly by the respondents. Therefore, they do not deserve to be enlarged on bail by the High Court.

14. The learned senior counsel further cited Section 389 of the CrPC which holds as under to contend that the High Court is required to record reasons in writing as to why an accused is enlarged on bail under Section 389.

"389. Suspension of sentence pending the appeal; release of appellant on bail.

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond."

15. The learned senior counsel has also relied upon the decision of this Court in the case of **Vijay Kumar v. Narendra & Ors.**¹ and the case of **Kishori Lal v. Rupa**² wherein this Court has set aside bail granted by the High Court under Section 389 on the ground that the decision of the High Courts were not based on sound legal reasoning.

¹ (2002) 9 SCC 364

² (2004) 7 SCC 638

16. On the other hand, while seeking bail for the respondents before the High Court, the learned senior counsel on behalf of the convicted respondents contended that the convicted respondents were on bail earlier but they did not misuse the liberty.

17. It was also contended by the learned senior counsel that the respondents did not dispute the date, time and place of the incident. However, there was a different version of the incident according to them.

18. We have heard the rival legal contentions raised by both the parties. We are of the opinion that the High Court has rightly applied its discretionary power under Section 389 of CrPC to enlarge the respondents on bail. Firstly, both the Criminal Appeal and Criminal Revision filed by both the parties are pending before the High Court which means that the convictions of the respondents are not confirmed by the appellate court. Secondly, it is an admitted fact that the respondents had been granted bail earlier and they did not misuse the liberty.

Also, the respondents had conceded to the occurrence of the incident though with a different version.

19. We are of the opinion that the High Court has taken into consideration all the relevant facts including the fact that the chance of the appeal being heard in the near future is extremely remote, hence, the High Court has released the respondents on bail on the basis of sound legal reasoning. We do not wish to interfere with the decision of the High Court at this stage. The appeal is dismissed accordingly.



.....J.
[DIPAK MISRA]

JUDGMENT

.....J.
[V. GOPALA GOWDA]

**New Delhi,
August 7, 2014**