REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 225 OF 2011
ARISING OUT OF
SPECIAL LEAVE PETITION (CRL.) NO. 8173 OF 2010

KANAKA REKHA NAIK … APPELLANT

VERSUS

MANOJ KUMAR PRADHAN & ANR. … RESPONDENTS

JUDGMENT

B. SUDERSHAN REDDY, J.

1. Leave granted.

2. This appeal impugns the order dated 7th July, 2010 passed by the High Court of Orissa in Miscellaneous Case No. 891 of 2010 in Criminal Appeal No. 312 of 2010, whereby the

High Court has granted bail to the respondent Manoj Kumar Pradhan, a sitting M.L.A., who has been convicted under Sections 147, 326 read with Section 149, IPC and sentenced to seven years rigorous imprisonment.

3. The appellant herein is the wife of the deceased who was killed and burnt during the Kandhamal riots in Orissa in the year 2008.

4. The trial Court found that at the time of occurrence, the present respondent along with others obstructed the deceased and his family members at Barepanga. Thereafter, the rioters arrived there being called by them. The trial Court observed:

> "They became part of the unlawful assembly after the arrival of the rioters.
>
> …
>
> At that time the members of the unlawful assembly were armed with deadly weapons like *tangia* (axe), knife etc. which, used as weapons of offence is likely to cause death. Some members of the unlawful assembly started assaulting the deceased brutally and mercilessly immediately arriving there. Thereafter, some members of the mob burnt him there. Arrival of several persons of ore than five at the place of occurrence, armed

with deadly weapons, being called by the accused persons and assaulting the deceased with various weapons clearly indicate that the common object of such unlawful assembly was to show criminal force or to cause violence and to commit hurt to the deceased with such weapons which endangered his life which amounts to cause grievous hurt. From their behaviour and conduct at the spot the same is apparent.

…

While assaulting the deceased, some members of the unlawful assembly exceeded their power and brutally killed the deceased at the spot beyond the common object of the unlawful assembly. Thereafter, some members of such unlawful assembly set fire to him. After killing him, some members of the unlawful assembly thought it prudent to wipe out the evidence of murder and accordingly they buried the burnt dead body of the deceased…

All the members of the unlawful assembly including the present two accused persons … can be held guilty for commission of the offence punishable under Section 326 read with Section 149, IPC as they shared the common object of the unlawful assembly to cause grievous hurt to the deceased…

After critical evaluation of the entire materials and the position of law, it is found that both the accused were involved for commission of the offence of rioting punishable under Section 147, IPC on the day of occurrence at the spot.

…with the same materials they are found guilty for commission of the offences punishable under Section 147 and 326/149, IPC not under Section 302/149, IPC and I convict them there under".

5. The trial Court also made a separate order of sentence which is as under:

"Convict Manoj Ku. Pradhan is a responsible person of the locality and he is also a public representative. Commission of riot by him with others can not be considered lightly. The crime committed by the convicts was not only against the individual victim but also the same was against the society at large. It is required under the law that punishment to be awarded for a crime must not be irrelevant but it should be conformed to and being consisted with the atrocity and brutality with which the crime has been perpetrated.

Keeping in view such principle and the circumstances under which the offence was committed if the convicts are sentenced to undergo rigorous imprisonment of seven years and to pay fine of Rs.5000/- each for the offence under Section 326/149, IPC and undergo rigorous imprisonment of one year and to pay fine of Rs.1000/- each for the offence under Section 147, IPC it will meet the ends of justice.

Both the convicts are hereby sentenced to undergo rigorous imprisonment of seven years and to pay fine of Rs.5000/- (Rupees five thousand) in default to undergo further rigorous imprisonment of six months for the offence under Section 326/149 and to undergo rigorous

> imprisonment of one year and to pay fine of Rs.1000/- (Rupees one thousand) in default to undergo further rigorous imprisonment of three months for the offence under Section 147, IPC. Substantive sentences are to run concurrently".

6. The respondent along with another convict preferred Criminal Appeal No. 312 of 2010 in the High Court of Orissa against the conviction and sentence passed by the trial Court. The appeal was taken up for admission on 7.7.2010 by the High Court and on the same day the High Court directed release of the respondent herein. The said order reads as under:

> "Considering the nature of allegation and the fact that the petitioner No.1 is a sitting M.L.A. of G.Udayagiri constituency, I directed that on petitioner's furnishing bail bond of Rs.20,000/- (Rupees twenty thousand) with two sureties each for the like amount to the satisfaction of the learned Ad hoc Addl. Sessions Judge, FTC-I, Phulbani, Kandhamal, they shall be released on bail. It is further directed that the petitioners shall not threaten the witnesses examined. Mr. Patnaik, learned Senior Advocate appearing for the informant states that since the petitioner No. 1 is an influential person, he may tamper with the evidence in other cases pending against him. He further states that security may be given to the informant Kanak Rekha Naik.

> Considering the above submission, I direct the Superintendent of Police, Kandhamal to provide adequate protection to her, if she applies for the same".

7. The above order is challenged on various grounds in this appeal.

8. Shri Colin Gonsalves, learned senior counsel appearing for the appellant submitted that the High Court committed serious error in directing the release of the respondent who has been convicted for the offences punishable under Sections 147, 326 read with Section 149, IPC. purely on the ground that he is a sitting M.L.A. The findings recorded by the trial Court against the convict are very serious in their nature. The learned senior counsel also submitted that the High Court failed to take into consideration the fact that the respondent is involved in more than one such similar cases and being an influential person, there is every likelihood of his tampering with the evidence in those cases pending against him.

9. Shri P.S. Narasimha, learned senior counsel for the respondent, on the other hand, submitted that the

appellant has no right to challenge the order directing the release of the respondent on bail. The learned senior counsel further submitted that the respondent had made a clear case for the suspension of his sentence pending the appeal preferred by him which may come up for hearing only after a considerable time and not in the near future. It was also submitted that during the trial, the appellant was on bail which is one of the important aspect to be taken into consideration.

10. We have heard both the learned senior counsel at a considerable length. For the purposes of disposal of this appeal, it is not necessary to recapitulate all the findings recorded by the trial Court as against the respondent for his conviction under Section 326 read with Section 149, IPC. Suffice it to note that there is a clear finding that he was involved in the commission of the offences punishable under Sections 147, 326/149, IPC. Of course, the same is under challenge in the criminal appeal preferred by him before the High Court. Precisely for that reason, we wish

to make no comment whatsoever on the findings recorded by the trial Court against the respondent.

11. We are unable to accept the submission made by Shri P.S. Narasimha, learned senior counsel for the respondent as to the maintainability of the present appeal preferred by the wife of the deceased for more than one reason. Firstly, it is evident from the impugned order that the appellant was heard by the High Court while considering the application filed by the respondent herein seeking suspension of the sentence pending the appeal. Secondly, we have granted permission to the appellant to file the appeal challenging the impugned order passed by the High Court. In the circumstances, it is not necessary to go into the correctness of the observations made by the Madras High Court in ***Srinath Prasad Vs. State***[1] upon which reliance has been placed by the learned senior counsel. They are too broadly stated and it does not deal with jurisdiction of the High Court. In that case, the High Court took the view that the intervener has no right to be

[1] 2004 Cri L.J. 3635

heard while deciding the petition to suspend the execution of sentence pending appeal. In our view, the High Court in exercise of its power under Section 482 of the Code of Criminal Procedure can always pass order and may hear even an intervener while considering the application seeking suspension of the sentence pending the appeal. It is for the High Court to decide as to the circumstances and the person who could be permitted to intervene while hearing the applications seeking suspension of sentence filed by the convicted person. It is a matter of exercise of jurisdiction by the High Court. But it cannot be said that the High Court has no jurisdiction to permit any intervener opposing the suspension of sentence and grant of bail by it in exercise of its power under Section 389 of the Code.

12. It is true that when a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate Court liberally unless there

are exceptional circumstances. But if for any reason, the sentence of a limited duration cannot be suspended, every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise, the very valuable right of appeal would be an exercise in futility by efflux of time [*see* ***Bhagwan Rama Shinde Gosai & Ors. Vs. State of Gujarat***[2]]. But, suspension of sentence, pending any appeal by a convicted person and consequential release on bail is not a matter of course. The appellate Court is required to record reasons in writing for suspending the sentence and release of a convict on bail pending the appeal. Therefore, the only question that falls for our consideration in the instant case is whether the High Court has taken into consideration all the facts and recorded any reason directing the release of the respondent pending the appeal preferred by him challenging his conviction by the trial Court?

[2] (1999) 4 SCC 421

13. There is no dispute that the respondent herein is involved in more than one case of similar nature of rioting etc. This fact has not been taken into consideration at all by the High Court. The High Court did not even suspend the execution of the sentence awarded by the trial Court but directed his release on bail. The High Court was obviously impressed by the singular fact that the respondent is a sitting M.L.A. The High Court did not record even a single reason confining the relief of releasing on bail only to the respondent, though there are two appellants in the appeal preferred challenging the judgment of the trial Court. What are the reasons for confining the relief only to the respondent herein and directing his release? The only reason appears to be the fact that the respondent is a sitting M.L.A. The law does not make any distinction between the representatives of the people and others, accused of criminal offences. Neither they can claim any privilege nor can it be granted by any Court. The law treats all equally.

14. In our considered opinion, the High Court ought to have taken the serious nature of allegations, the findings recorded by the trial Court and the alleged involvement of the respondent in more than one case, for deciding as to whether it is a fit case for suspending the sentence awarded by the trial Court and his release on bail during the pendency of the appeal. The impugned order does not record any reason whatsoever except vague observation that nature of allegations have been taken into consideration. The order clearly reflects that the High Court was mainly impressed by the fact that the respondent is a sitting M.L.A. In the circumstances, we find it difficult to sustain the order.

15. For the aforesaid reasons, the impugned order is set aside and the matter is remitted to the High Court for its fresh consideration in accordance with law. We make it clear that we have not expressed any opinion whatsoever as to whether it is a fit case for the suspension of sentence of the respondent No. 1 during the pendency of

the appeal and for release on bail. It is for the High Court to arrive at a proper conclusion for which purpose, reasons are required to be recorded.

16. The appeal is allowed accordingly.

.....J
(B. SUDERSHAN REDDY)

NEW DELHI, **.....J.**
JANUARY 25, 2011. **(SURINDER SINGH NIJJAR)**