

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2782 OF 2023  
(@ SLP (Crl.) No.6347 of 2023)

SHIV KUMAR

APPELLANT

VERSUS

THE STATE OF UP & ANR.

RESPONDENTS

ORDER

1. Leave granted.
2. The appellant is aggrieved by an order dated 13<sup>th</sup> April, 2023<sup>1</sup>, passed by the High Court of Judicature at Allahabad granting regular bail to the respondent No.2<sup>2</sup> in case Crime No.39/2021 filed under Sections 147, 148, 149 and 302 of the IPC<sup>3</sup> and Sections 3(2)5, 3(2)5ka of the SC/ST Act<sup>4</sup>, registered at Police Station Nawabganj, District, Kanpur Nagar.
3. Learned counsel for the appellant submits that this is a case of double murder. The appellant is the brother of the two deceased who were attacked by 7 accused including the respondent No.2<sup>2</sup> herein on 19<sup>th</sup> February, 2021, with different weapons including fire arms and sharp edged weapons. Both the deceased when taken to the hospital, were declared dead by the doctors. The specific role attributed to the respondent No.2<sup>2</sup> herein is of carrying an axe and

<sup>1</sup> In Criminal Appeal No. 4076 of 2021

<sup>2</sup> Accused No. 4 – for short ‘A-4’

<sup>3</sup> Indian Penal Code

<sup>4</sup> The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989

grievously injuring the deceased brothers. It is submitted that as per the post mortem report, a total of 25 injuries were found on the body of the deceased-Rajkumar and 8 injuries on the body of the deceased-Ravi. Learned counsel submits that in the teeth of such a heinous crime, the High Court has granted bail to the respondent No.2<sup>2</sup> for considerations that ought not to have weighed with the Court at all.

4. Learned counsel for the appellant-complainant adds that one of the accused-Deepu Nishad (A-5), was granted bail by the same Court and when the appellant had approached this Court by preferring a petition in Criminal Appeal No.520 of 2022 (@ SLP (Crl.) No.7376 of 2021), vide order dated 29<sup>th</sup> March, 2022 passed by a three-Judges Bench of this Court of which one of us (Hima Kohli, J.) was a member, it was observed as below :

*“On perusal of the record, we find that the First Information Report was registered against 7 accused persons, out of whom 2 accused were unidentified, under Sections 147, 148, 149, 302 of Indian Penal Code and Section 3 (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.*

*It appears from the FIR that at around 11 pm on the date of incident, the appellant-complainant heard some noise outside his house. When he came out, he saw that his brother Rajkumar and Ravi were lying in a pool of blood. All the accused were attacking them with various weapons including fire arms and sharp edged weapons. The main role attributed to Respondent No.2 was that he was exhorting the other accused to attack the victims. Both the victims were declared dead on arrival at the hospital. It is also alleged by the complainant that Respondent No. 2 had previously threatened to kill his brother.*

*It has been stated in the counter affidavit by Respondent No.1 – State that Respondent No. 2 is the main accused in the present case of double murder. It is also stated that the post-mortem report dated 20.02.2021 indicates that gruesome injuries were inflicted on the deceased persons including multiple chopped wounds on the face, multiple abraded contusions and fire arms wounds. The*

*State has also placed on record various criminal antecedents of the Respondent No. 2 including cases under Sections 302, 307, 506, 149 IPC, Gunda Act and SC/ST Act. The State further submits that the Respondent No. 2 is an influential person and there is every likelihood of tampering with the evidence and threatening witnesses in the case.*

*It is strange that in a case of such a grievous nature, while recording some of the above facts, the High Court in the impugned order has granted bail to Respondent No.2. In fact, after recording the submissions of the various counsel, the High Court has proceeded to grant bail to Respondent No.2 without any further reasoning. It is a settled position that while granting bail in such serious cases, some reasons justifying the grant are necessary.*

*In view of the above, we set aside the impugned order of the High Court granting bail to Respondent No. – 2. Two weeks' time from today is granted to him to surrender before the concerned Trial Court.*

*The Respondent No.2 would be at liberty to approach the Trial Court for grant of bail after some time.*

*The Criminal Appeal is allowed in the aforesaid terms.”*

5. Learned counsel for the appellant-complainant submits that the aforesaid order was deliberately not brought to the notice of the High Court when the impugned order came to be passed. Subsequently, when a fresh application for bail was filed by Deepu Nishad (A-5), the aforesaid order was placed before the High Court and the said application was rejected *vide* order dated 08<sup>th</sup> June, 2023. A similar order was passed by the High Court dismissing the application seeking regular bail moved by another co-accused, Ankit @ Ragini Yadav (A-7), *vide* order dated 08<sup>th</sup> June, 2023.
6. On the last date of hearing, we had directed learned counsel for the respondent No.1-State to inform us as to the status of the trial and indicate whether respondent No.2<sup>2</sup> has any other criminal antecedents.
7. Learned counsel for respondent No.1-State states that he has filed

an affidavit, which is not on record. A copy thereof has been handed over in the course of arguments. The said affidavit states that the respondent No.2<sup>2</sup> has criminal antecedents. Apart from the present case (Case Crime No.39 of 2021), he is also arrayed as an accused in Case Crime No.152 of 2021 under Section 3(1) of the Uttar Pradesh Gangsters Act and Case Crime No.56 of 2021 under Section 4/25 of the Arms Act. As for the status of the trial in the instant case, it is submitted that out of 15 witnesses, 13 witnesses have been examined so far. Learned counsel does not dispute the fact that the impugned order granting regular bail to the respondent No.2<sup>2</sup> has been passed by the High Court within about two years of his being taken into custody.

8. Learned counsel for the respondent No.2<sup>2</sup> opposes the present appeal and submits that two other cases referred to by learned counsel for respondent No.1-State in the affidavit arise out of same incident and those cases are being tried separately. He further submits that the respondent No.2 had no reason to refer to or rely on the order passed by this Court in Criminal Appeal No.520 of 2022 (@ SLP (Crl.) No.7376 of 2021) as he was not seeking parity with the said accused.

9. We have heard learned counsel for the parties and examined the order impugned herein. The considerations that have weighed with the High Court for having released respondent No.2<sup>2</sup> on a regular bail in an offence relating to a double murder, within a period of two years (approximately) are as follows :

(1) *Uncertainty regarding conclusion of trial;*

- (2) *One sided investigation by the police;*
- (3) *Ignoring the case of the accused side;*
- (4) *Respondent No.2 being an under-trial, is entitled to speedy trial;*
- (5) *Larger mandate of Article 21 of the Constitution of India; and*
- (6) *Overcrowding in jails.*

10. We are amazed at the reasons that have swayed the High Court to grant bail to the respondent No.2<sup>2</sup> in such a heinous crime of double murder. The conduct of both, the Investigation Officer who had briefed the State Counsel appearing before the High Court and the respondent No.2<sup>2</sup> herein (appellant in Criminal Appeal No.4076 of 2021), deserves to be deprecated; the former, for failing to properly assist the State Counsel who had appeared before the High Court and the latter, for having deliberately withheld material information from the High Court with regard to cancellation of the bail order in respect of the co-accused-Deepu Nishad (A-5). It is noteworthy that this Court had passed the order cancelling the bail granted to the co-accused, Deepu Nishad (A-5) on 29<sup>th</sup> March, 2022 whereas the impugned order was passed after a year, on 13<sup>th</sup> April, 2023. There was ample opportunity for both, the respondent No.2<sup>1</sup> as also the State to have in all fairness, apprised the High Court of the view expressed by this Court in Criminal Appeal No.520 of 2022 (@ SLP (Crl.) No.7376 of 2021).

11. As a matter of fact, this was a fit case where not just the complainant, but the State Government itself ought to have taken steps at the earliest to approach

this Court for seeking cancellation of the bail order granted in favour of the respondent No.2<sup>2</sup>. But as it appears to be the trend in several cases, cancellation of bail applications are not moved by the State Government, but by the private party/complainant. It is also not understood that when the offences referred to by the respondent No.1-State in its affidavit have arisen out of the very same crime, why was at least one of the two cases, namely, Criminal Case No.56 of 2021 registered under Section 4/25 of the Arms Act not placed before the same Court so that a common trial could be conducted. Case Crime No.152 of 2021 having been filed under the Uttar Pradesh Gangsters Act, would of course have to be tried by the competent designated Court but the same analogy could not have applied to Case Crime No.56 of 2021.

12. We have also noticed that many a times, due to sheer lack of coordination, an accused in a case filed for a connected offence, as for example under the Arms Act, ends up being acquitted due to insufficient evidence produced by the prosecution and absence of proper assistance rendered to the Court, thus leaving gaping loopholes in the case setup by the prosecution in the principal case. The advantage of this acquittal is then taken by the accused in the connected case where the offence is more grievous and the punishment more stringent.

13. In view of the above, we deem it appropriate to direct that henceforth, all cases arising out of the principal crime, should be tried and decided in the course of the same trial before the same judge instead of being bifurcated and sent for trial to different courts, unless and until a Court has been specially designated to try an

offence under a particular Statute. We also deem it appropriate to direct the Secretary (Home), State of Uttar Pradesh, to take immediate remedial measures to sensitize and streamline the Directorate of Prosecution, which is the very backbone of the criminal justice system and cannot afford to falter.

14. For the reasons noticed above, the present appeal is allowed. Respondent No.2<sup>2</sup> is directed to surrender within a period of one week from today. Needless to state that in the event respondent No.2 applies for bail afresh, the said petition shall be considered on the basis of any subsequent events/changed circumstances and decided strictly in accordance with law.

15. The Registry is directed to transmit a copy of this order to the Secretary (Home), State of Uttar Pradesh for taking appropriate steps. Another copy of this order shall be transmitted to the Registrar General, High Court of Judicature at Allahabad for being placed before the Chief Justice for perusal.

.....J.  
( HIMA KOHLI )

.....J.  
( RAJESH BINDAL )

**NEW DELHI**  
**12<sup>th</sup> SEPTEMBER, 2023**

ITEM NO.10

COURT NO.14

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 2782/2023 (@ slp (Cr1.) No.6347 of 2023)

(Arising from the impugned judgment and final order dated 13.04.2023 passed by the High Court of Judicature at Allahabad, U.P. in Cr1. Appeal No.4076 of 2021)

SHIV KUMAR

Appellant(s)

VERSUS

THE STATE OF UP & ANR.

Respondent(s)

( IA No. 101105/2023 - EXEMPTION FROM FILING O.T.)

Date : 12-09-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI  
HON'BLE MR. JUSTICE RAJESH BINDAL

For Appellant(s) Mr. Sanjay Kumar Visen, AOR  
Mr. R. S. Gautam, Adv.  
Ms. Himani Bhatnagar, Adv.  
Ms. Suvarna Singh, Adv.

For Respondent(s) Mr. Pradeep Kumar Yadav, Adv.  
Mr. Vishal Thakre, Adv.  
Mr. Gopal Singh, Adv.  
Mr. Aryan P. Nanda, Adv.  
Mr. Sanjeev Malhotra, AOR  
  
Mr. Ankit Goel, AOR  
Mr. Rohit Pandey, Adv.  
Mr. Ashish Kumar Chaurasiya, Adv.

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

1. Application seeking exemption from filing official translation is allowed.



2. Leave granted.
3. The appeal is allowed in terms of the signed order.
4. The order inter alia reads as under :

*“14. For the reasons noticed above, the present appeal is allowed. Respondent No.2<sup>2</sup> is directed to surrender within a period of one week from today. Needless to state that in the event respondent No.2 applies for bail afresh, the said petition shall be considered on the basis of any subsequent events/changed circumstances and decided strictly in accordance with law.*

*15. The Registry is directed to transmit a copy of this order to the Secretary (Home), State of Uttar Pradesh for taking appropriate steps. Another copy of this order shall be transmitted to the Registrar General, High Court of Judicature at Allahabad for being placed before the Chief Justice for perusal.”*

**(Geeta Ahuja)**  
**Assistant Registrar-cum-PS**

(Signed Order is placed on the file)

**(Nand Kishor)**  
**Court Master (NSH)**