

CASE NO.:
Review Petition (crl.) 1561 of 2001

PETITIONER:
PAWAN @ TAMATAR

Vs.

RESPONDENT:
RAM PRAKASH PANDEY & ANR.

DATE OF JUDGMENT: 10/05/2002

BENCH:
Syed Shah Mohammed Quadri & S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.

1) By this Petition the applicant (who was Respondent No. 2 in Criminal Appeal No. 880 of 2001) seeks review of judgment and order dated 31st August, 2001. Parties are being referred to in their capacity in Criminal Appeal No. 880 of 2001.

2) Briefly stated the facts are as follows:

The Petitioner is the informant and husband of one Shrimati Hem Lata Pandey. The said Hem Lata Pandey had appeared as an eye witness against the accused of Respondent No. 2 viz. one Shri Vinod Kumar, in a trial for murder of the wife of Vinod Kumar. Vinod Kumar was convicted by the trial court and sentenced to life imprisonment. Vinod Kumar was granted bail by the Appellate Court. The said Hem Lata Pandey, on coming to learn that Vinod Kumar had been granted bail, approached the Government for protection. She also filed a petition before the High Court of Judicature at Allahabad. The petition was disposed of with a direction to the Home Secretary to consider the representation of the lady. In spite of all this no protection was given to the said Hem Lata Pandey.

3) It is claimed that on 31st January, 2000 the informant was working along with his wife and two servants in his own field. Respondent No. 2 and Vinod Kumar came to the field and opened fire with their guns at the said Hem Lata Pandey. As a result of this the said Hem Lata Pandey received gun shots wounds on her chest and died on the spot. A case has been registered against Respondent No. 2 and Vinod Kumar under Section 302 read with Section 34 of the Indian Penal Code.

4) Respondent No. 2 moved an application for bail. This was rejected by the Session Court on 13th July, 2000. Respondent No. 2 then moved an application for bail under Section 439 of the Criminal Procedure Code before the High Court of Judicature at Allahabad. The High Court directed release of Respondent No. 2 by order dated 29th September, 2000. Against the order dated 29th September, 2000, the petitioner filed an SLP before this Court. By order dated 31st August, 2001 this Court cancelled the bail, inter alia, on the ground that under Section 437 of the

Criminal Procedure Code if a person has been previously convicted of an offence punishable with life imprisonment then that person shall not be released on bail unless there is no reasonable ground for believing that the person has not committed the offence and that there are special reasons to do so.

5) By this Review Petition it is being pointed out that the facts mentioned in the order dated 31st August, 2001 pertain not to the applicant but to Vinod Kumar. It is submitted that the provisions of Section 437 Criminal Procedure Code do not apply as the applicant has not been tried or convicted in any other matter.

6) Mr. A.S. Pundir, who appears for the State, fairly admits that the facts mentioned in order dated 31st August, 2001 do not pertain to Respondent No. 2 but pertain to co-accused Vinod Kumar. In this view of the matter we set aside the order dated 31st August, 2001 and restore Special Leave Petition (Criminal) No. 1970 of 2001 to the file of this Court.

7) We now take up Special Leave Petition (Criminal) No. 1970 of 2001. The question is whether the order of the High Court granting bail to the applicant can be sustained.

8) Mr. Pundir points out that even prior to the present case Respondent No. 2 has been involved in the following two cases :

(i) Case Crime No. 104/97 for the offences under Sections 143, 323, 504, 506, 352, 427 I.P.C. of Police Station Pokhraj, the said case ended in submission of a final report.

(ii) Case Crime No. 228/98 for the offences under Sections 147, 148, 452, 382, 504, 506, 427 I.P.C. of Police Station Kokhraj (Kaushamibi) charge sheet was filed on 11.10.1998 and the case is pending trial in the Court.

9) It is also to be seen that Respondent No. 2 is the main accused in the killing of Smt. Hem Lala Pandey. The High Court had granted bail on the following grounds:

"It is not disputed that the investigation of the case has been entrusted to C.B./C.I.D. by the order of the Chief Minister, Copy whereof is annexure-10. It is also not disputed that the C.B./C.I.D. normally takes an year or so in concluding the investigation. The allegations of ailment of the applicant are not specifically denied. Only this much is stated that documents are forged and have been prepared to obtain bail.

Considering facts and circumstances of the case, I am of the view that the applicant may be released on bail."

10) In our view these are not grounds on which bail should be granted in a case of such a serious nature. It is to be seen that two witnesses have already retracted their statements. There are still eye witnesses, who have directly connected Respondent No. 2 and assigned a specific role to Respondent No. 2 in the murder of the deceased. So far as the ailment of Respondent No. 2 is concerned, it is not of such a nature as to require him to be released on bail. Respondent No. 2 can always apply to the Jail authorities to see that he gets the required treatment. It is pertinent to note that in the Review Petition it has not been stated that the applicant still needs medical treatment. It is not stated that he has not received proper medical treatment from the

Jail authorities.

11) For the reasons aforesaid we set aside the order of the Allahabad High Court dated 29th September, 2000. The appeal stands disposed of accordingly. There will be no order as to costs.

....J.
(SYED SHAH MOHAMMED QUADRI)

J.
(S. N. VARIAVA)

May 10, 2002.

JUDIS