

CASE NO.:
Appeal (crl.) 969-972 of 2008

PETITIONER:
JAGDISH

RESPONDENT:
STATE OF U.P. AND ORS.

DATE OF JUDGMENT: 14/05/2008

BENCH:
S.B. SINHA & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT

O R D E R
[Arising out of SLP(Crl.) Nos.1912-1915/2008]

1. Leave granted.
2. This appeal is directed against the judgment and orders dated 20.9.2007, 15.11.2007, 22.11.2007 & 13.12.2007 granting bail to various accused persons who are facing trial under Sections 364A, 302 and 201 of the Indian Penal Code.

3. Our attention has been drawn to the fact that one of the Judges of the Allahabad High Court by an order dated 17.4.2007 refused to grant bail to the accused 'Johny' stating :

\023The applicant and co-accused demanded ransom. The applicant and co-accused had assembled to collect ransom amount and were arrested by the police. The recovery of dead body of victim a eight year old boy was made in pursuance of joint disclosure statement of applicant and co-accused five days after the abduction. The charge sheet has been submitted after the investigation. The applicant being involved in the case of abduction and killing of eight year old boy, I do not consider it to be a fit case for bail.\024

4. According to Mr. Jain, however, suppressing the said fact, Sewa Ram applied for grant of bail which was granted by another learned Judge by an order dated 20.9.2007. Thereafter, the applications for bail filed by Johny, Neetu, Sumer Chand and Bablu have been allowed. It was submitted that had the fact of rejection of bail application of 'Johny' been brought to the notice of the Court while considering the bail application filed by Sewa Ram, the same would have been rejected.

5. Our attention was, furthermore, drawn to the fact that even during the trial, the respondents have been threatening the appellant and his family members. Our attention in this behalf has been drawn to a report filed on 9.2.2008 under Sections 107/116 of the Code of Criminal Procedure as also the First Information Report, lodged during the pendency of this special leave petition, in relation to an occurrence which took place at about 9.00 a.m. on 2.5.2008, alleging that threat of causing death and injury to the father and brother of Vikram has been extended by Neetu and others which amounted to commit offence under Section 506 of the IPC.

6. Learned counsel appearing on behalf of the respondents, however, have drawn our attention to the following facts:

(1) That Johny in his second application has categorically stated about the rejection of his earlier bail application. In the connected matter, all the accused have been acquitted.

(2) There was sufficient evidence brought on record to show that at least Sumer Chand and Bablu have been falsely implicated, particularly in view of the fact that Bablu has been a handicapped person, which fact has been taken note of by the

learned Fast Track Court while passing the judgment dated 22.8.2007 in Sessions Case No. 162/2007.

7. The trial is nearly complete. It is expected to be over by July, 2008.
8. We do not intend to enter into the merit of the matter, although the learned counsel for the parties have taken us through not only the judgment of the learned Fast Track Court in the aforementioned sessions trial, but also to the deposition of the informant in the instant case.
9. Certain basic principles as regards interference with the order granting bail and an application for cancellation of bail, can never be lost sight of. Although the impugned orders are not very reasoned ones, it appears that the relevant facts had been taken note of. It also appears that so far as 'Johnny' is concerned, he was not guilty of any suppression of fact. It may be true that after grant of bail to Sewa Ram, wherein the learned Public Prosecutor might not have drawn the attention of the Court to the order dated 17.4.2007 passed by another learned Judge, the same by itself may not be a ground for interference with the impugned orders.
10. We, therefore, are of the opinion that although it is not necessary to interfere with the impugned judgments at this stage, interest of justice demands that if the prosecution witnesses have not been examined, they may be given requisite protection if any occasion arises therefor.
11. The State, indisputably, would be entitled to proceed with the investigation in regard to the subsequent First Information Report lodged during the pendency of this appeal, namely, First Information Report No. 102/2008. It would also be open to the concerned Magistrate to proceed in the matter arising out of the report filed by the appellant under Section 107/116 of the Cr.P.C. on 9.10.2008.
12. It also goes without saying that the State or the appellant, if any occasion arises therefor, would be entitled to file application for cancellation of bail under sub-section (2) of Section 438 of the Cr.P.C.
13. The appeals are dismissed with the aforementioned observation.