

ITEM NO.2

COURT NO.5

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).409/2019

KARUNA SHANKAR @ KALLU

Appellant(s)

VERSUS

STATE OF U.P & ANR.

Respondent(s)

([CUSTODY MATTERS]

IA No.60050/2021 - CANCELLATION OF BAIL

IA No.60051/2021 - EXEMPTION FROM FILING O.T.)

Date : 23-11-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE DIPANKAR DATTA

HON'BLE MR. JUSTICE UJJAL BHUYAN

For Appellant(s) Mr. Shekhar G Devasa, Adv.
Mr. Rohit Pandey, Adv.
Mr. Manish Tiwari, Adv.
Ms. Thashmitha Muthanna, Adv.
Mr. Shashi Bhushan Nagar, Adv.
For M/S. Devasa & Co., AOR

For Respondent(s) Mr. Ardhendumauli Kumar Prasad, A.A.G.
Mr. Rohit K. Singh, AOR
Mr. Vijay Kumar, Adv.
Ms. Ananya Sahu, Adv.
Ms. Tania Sharma, Adv.

Mr. Sanjay Mani Tripathi, Adv.
Mr. Suraj Singh, Adv.
Mr. Kamal Kant Tripathi, Adv.
Ms. Anu Gupta, AOR

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

IA No.60050/2021 In Cr1.A.No.409 of 2019

1. The instant application has been filed by the complainant/respondent No.2 seeking recall of order dated

09.04.2021, whereby the non-applicant/appellant was ordered to be released on bail during the pendency of his criminal appeal. The primary ground taken in the application is that the bail order has been obtained by concealment of facts.

2. We have heard learned counsel for the parties and carefully perused the material placed on record.

3. The appellant was convicted and sentenced by the Trial Court on 07.09.2002 under Sections 302/34 and 307/34 IPC in FIR No.73/1999 dated 20.05.1999, registered at Police Station Jaitpur, District Ambedkar Nagar. He filed a Criminal Appeal, which was dismissed by the High Court, against which he has filed Criminal Appeal No.409/2019, which is pending before this Court. It is alleged that the appellant and his co-accused did not surrender after dismissal of his Criminal Appeal by the High Court and they were declared absconders. Meanwhile, the appellant was named as the main accused in FIR No.106/2014, dated 06.07.2014, also under Section 302 IPC, for committing the murder of the informant of FIR No.73/1999. The record reveals that the appellant filed SLP(Cr1.)No.4210/2015 before this Court against the dismissal of his Criminal Appeal by the High Court. His application for exemption from surrendering was rejected by this Court on 14.07.2014, and he was granted four weeks' time to surrender and file proof thereof. The time to surrender was further extended for another 15 days on 11.09.2014. It, thus, appears that at the time when the appellant applied for extension of time for surrendering before this Court, he had already been named in FIR No.106/2014 for committing the murder of Uday Bhan Pandey, who was the informant in FIR No.73/1999 and was brother of the deceased, whose murder led to registration of the first FIR. The record further reveals that the appellant did not surrender despite the time limit extended by this Court from time to time as a result of which, the above-mentioned Special Leave Petition was dismissed. Later on the appellant was apprehended in the year 2018, whereupon the above-mentioned SLP was also restored to its original number. Subsequently, leave was granted on 27.02.2019.

4. Taking into consideration the totality of the circumstances, namely, (i) that the appellant is involved in another murder case in FIR No.106/2014 and (ii) the fact that he remained absconded for more than four years after his appeal against the conviction and sentence was dismissed by the High Court, are sufficient to infer at this stage that the appellant has misused the concession of bail which was granted to him by the High Court during pendency of his appeal in the High Court.

5. Consequently, we recall the order dated 09.04.2021 and cancel the bail granted to the appellant.

6. Faced with this, learned counsel for the appellant submits that presently, the appellant is hospitalized. We direct the State of Uttar Pradesh to constitute a Medical Board to ascertain the health condition of the appellant. As and when he is declared fit, he shall be discharged from the hospital and sent to jail forthwith.

7. However, this order shall have no bearing on the merits of the appeal pending consideration before this Court.

8. I.A.No.60050/2021 is, accordingly, dismissed.

9. As a sequel thereto, the pending interlocutory application also stands disposed of.

(SATISH KUMAR YADAV)
DEPUTY REGISTRAR

(PREETHI T.C.)
COURT MASTER (NSH)