

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 117 OF 2018
[@ SPECIAL LEAVE PETITION (CRL.) NOS. 9585 OF 2016]

SUNITA DEVI

APPELLANT(S)

VERSUS

STATE OF BIHAR & ANR.

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

1. Leave granted.
2. The defacto complainant is before us, aggrieved by an order dated 12.07.2016 passed by the High Court of Judicature at Patna in I.A. No. 1630 of 2015 in Criminal Appeal (DB) No. 672 of 2013, suspending the sentence awarded to Respondent No. 2, in a case where he had been convicted by the trial court under Section 302 IPC.
3. Mr. M. Shoeb Alam, learned counsel appearing for the State, has invited our attention to the mandatory requirement of Section 389 Cr.P.C. He has also invited our attention to the Judgment of this Court in Atul Tripathi Vs. State of Uttar Pradesh & Ors., reported in (2014) 9 SCC 177, where the legal position has been summed up at paragraph 15, which reads as follows :-

"15. To sum up the legal position :

15.1. The appellate court, if inclined to consider the release of a convict sentenced to punishment for death or imprisonment for life or for a period of ten years or more, shall first give an opportunity to the Public Prosecutor to show cause in writing against such release.

15.2. On such opportunity being given, the State is required to file its objections, if any, in writing.

15.3 In case the Public Prosecutor does not file the objections in writing, the appellate court shall, in its order, specify that no objection had been filed despite the opportunity granted by the court.

15.4. The court shall judiciously consider all the relevant factors whether specified in the objections or not, like gravity of offence, nature of the crime, age, criminal antecedents of the convict, impact on public confidence in court, etc. before passing an order for release."

4. Admittedly, such procedure has not been followed in this case. Therefore, the order is set aside. The matter is remitted to the High Court for passing orders afresh in accordance with law. We also make it clear that since we have not referred to the other contentions raised by the appellant herein, it will

be open to the parties to raise all available contentions and the High Court shall advert to the same and pass a reasoned order.

5. We find that the second respondent herein has been released on bail pursuant to an order dated 12.07.2016, which order we have set aside. Having regard to the submissions made before us, we are of the view that the second respondent be treated on an interim bail for a further period of three months, within which time, we request the High Court, in any case, to dispose of the application filed by the second respondent for suspension of sentence afresh as per this Judgment.

6. In view of the above, the appeal is disposed of.

.....J.
[KURIAN JOSEPH]

.....J.
[AMITAVA ROY]

New Delhi;
January 18, 2018.

ITEM NO.8

COURT NO.5

SECTION II-A

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

Petition for Special Leave to Appeal (Crl.) No. 9585 of 2016.

SUNITA DEVI

Appellant(s)

VERSUS

STATE OF BIHAR & ANR.

Respondent(s)

Date : 18-01-2018 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Mr. Rakesh Kumar Singh, Adv.
Mr. Prem Prakash, AOR

For Respondent(s) Mr. Nagendra Rai, Sr. Adv.
Mr. Shashank Sorav, Adv.
Mr. Prashant Kumar, Adv.
Mr. Shantanu Sagar, AOR

Mr. M. Shoeb Alam, Adv.
Ms. Fauzia Shakeel, Adv.
Mr. Ujjwal Singh, Adv.
Mr. Mojahid Karim Khan, Adv.

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

Leave granted.

The appeal is disposed of in terms of the signed
non-reportable Judgment.

Pending Interlocutory Applications, if any, stand disposed of.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU DIWAN)
ASSISTANT REGISTRAR

(Signed non-reportable Judgment is placed on the file)