

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 662 OF 2018**

(Arising out of S.L.P.(Crl.)No.1410 of 2018)

Prem Giri

....Appellant(s)

VERSUS

State of Rajasthan

....Respondent(s)

**J U D G M E N T**

**Abhay Manohar Sapre, J.**

1. Leave granted.
2. This appeal is filed against the order dated 05.02.2018 passed by the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Misc. Bail No. 9471 of 2017 whereby the Single Judge of the High Court dismissed the application for anticipatory bail filed by the appellant herein.

3. Facts of the case lie in a narrow compass. They, however, need to be mentioned infra to appreciate the short issue involved in the case.

4. The appellant apprehending his arrest in connection with commission of the offences punishable under Sections 143, 341, 323, 308 332 and 353 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) pursuant to FIR No. 332/2017 registered at Police Station Jaitaran, District Pali filed an application for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) before the High Court of judicature for Rajasthan at Jodhpur being S.B. Criminal Misc. Bail No. 9471/2017.

5. The Single Judge by order dated 22.11.2017 dismissed the application. The appellant, felt aggrieved by the order of dismissal, filed S.L.P.(Crl.)

No. 9672 of 2017 in this Court, which on being granted leave was registered as Criminal Appeal No. 2188/2017.

6. This Court, by order dated 14.12.2017 (Annexure-P-5) allowed the appeal, set aside the order dated 22.11.2017 passed by the Single Judge of the High Court and remanded the case to the High Court with a request to decide the appellant's bail application afresh on merits.

7. This Court remanded the case to the High Court because it was noticed that the High Court while dismissing the application had not assigned any reason in support of the dismissal.

8. On remand, the High Court, by impugned order dated 05.02.2018 in S.B.Crl. Misc. Bail No. 9471/2017, without setting out the facts and assigning any reasons, again dismissed the appellant's bail application, which has given rise to

filing of this appeal by way of special leave in this Court by the appellant.

9. Heard Mr. Sushil Kumar Jain, learned senior counsel for the appellant and Mr. Anish Kumar Gupta, learned counsel for the respondent-State.

10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside of the impugned order remand the case to the High Court for deciding the bail application afresh on merits and in accordance with law.

11. The impugned order reads as under:

**“Heard learned counsel for the accused petitioner, learned Public Prosecutor so also learned counsel for the complainant.**

**After perusing the order impugned and considering the facts and circumstances of the case, I am not inclined to grant anticipatory bail to the accused petitioner, hence, the instant application for anticipatory bail is hereby dismissed.”**

12. It seems that while passing the impugned order, the order dated 14.12.2017 passed by this Court on the earlier occasion in this very case was not brought to the notice of the High Court.

13. In our view, the order impugned also suffers with the same error on which this Court, by order dated 14.12.2017, had set aside the earlier order of the High Court. In other words, this Court set aside the earlier order of the High Court because it did not contain any reasoning. The impugned order suffers from the same error.

14. We, therefore, allow the appeal, set aside the impugned order dated 05.02.2018 and remand the case to the High Court with a request to decide the bail application filed by the appellant under Section 438 of the Code afresh on merits in accordance with law.

15. Needless to observe, the High Court will take into consideration our earlier order dated 14.12.2017 while passing the order on the application.

.....J.  
[R.K. AGRAWAL]

.....J.  
[ABHAY MANOHAR SAPRE]

New Delhi;  
May 02, 2018