[2023] 14 S.C.R. 181 : 2023 INSC 970

CASE DETAILS

PURUSHOTHAMAN

v.

STATE OF TAMIL NADU

(Criminal Appeal No.3341 of 2023)

OCTOBER 30, 2023

[ABHAY S.OKA AND PANKAJ MITHAL, JJ.]

HEADNOTES

Issue for consideration: When the sentence of accused is suspended on appeal and he is released on bail, whether the High Court can cancel the bail without giving a reasonable opportunity, to the accused of being heard.

Code of Criminal Procedure, 1973 – s. 389 – Suspension of sentence pending the appeal; release of appellant on bail - Appeal against conviction by the accused admitted by the High Court – Substantive sentence of the accused suspended and he was enlarged on bail – When appeal called for hearing, the High Court cancelled the bail of the accused, without giving an opportunity of hearing, as an advocate for the accused sought four weeks adjournment – Correctness:

Held: For the default of the advocate appointed by the accused, the appellate court cannot penalize the accused by proceeding to cancel his bail only on the ground that his advocate has sought adjournment and that also without giving an opportunity of being heard to him on the issue of cancellation of bail – Under sub-section 1 of s. 389, while suspending the sentence of the accused who is in Jail, the appellate court has to enlarge the accused on bail till the final disposal of the appeal – Court can even Suo Motu issue a notice calling upon the accused to show cause why the bail should not be cancelled – Under no circumstances, the bail granted to an accused u/s. 389(1) can be cancelled without giving a reasonable opportunity to the accused of being heard – In a given case, if the advocate appearing for the accused seeks adjournment on untenable and

unreasonable grounds, the appellate court is well within its power to refuse the prayer for adjournment, and has a discretion to appoint an advocate to espouse the cause of the appellant – Thus, such approach on the part of the High Court cannot be countenanced – Impugned order is quashed and set aside and the earlier order granting suspension of sentence and bail to the accused is restored – Protection of Children from Sexual Offences Act, 2012 – s. 6. [Paras 5, 7-10]

LISTS OF CITATIONS AND OTHER REFERENCES

Bani Singh v. State of U.P. (1996) 4 SCC 720: [1996] 3 Suppl. SCR 247 – relied on.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.3341 of 2023.

From the Judgment and Order dated 07.07.2023 of the High Court of Judicature at Mardas in CRLA No.203 of 2017.

Appearances:

B. Karunakaran, Ajith Williyam S., Shankar P., Eashwar for S. Gowthaman, Advs. for the Appellant.

Dr. Joseph Aristotle S., Ms. Shubhi Bhardwaj, Advs. for the respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

ABHAY S.OKA, J.

Leave granted.

2. Heard the learned counsel appearing for the parties.

3. The appellant-accused was convicted by the Trial Court for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). The appeal against conviction preferred by the appellant was admitted by the High Court and by

the order dated 12th January, 2018, the substantive sentence of the appellant was suspended and he was ordered to be enlarged on bail.

4. On 7th July, 2023, the said Criminal Appeal of the year 2017 was called out before the learned Single Judge of the High Court for hearing. The Advocate for the appellant sought adjournment for four weeks. Only on the ground that the appellant is enjoying the facility of bail and that his advocate applied for adjournment, the High Court proceeded to cancel the bail.

5. In a given case, if the advocate appearing for the appellant-accused seeks adjournment on untenable and unreasonable grounds, the Appellate Court is well within its power to refuse the prayer for adjournment. In such a case, one of the courses suggested by a decision of this Court in the case of Bani Singh v. State of U.P.[1] can always be adopted by the High Court. The High Court has a discretion to appoint an advocate to espouse the cause of the appellant when the advocate appointed by the appellant refuses to argue the appeal on unreasonable grounds. Though the High Court has an option of considering the merits of the appeal and deciding the same on merits, the High Court could always adopt the first course of appointing an advocate to espouse the cause of the appellant.

6. Sub-section 1 of Section 389 of the Code of Criminal Procedure, 1973 (for short "CrPC") reads thus:

> "389. Suspension of sentence pending the appeal; release of appellant on bail - (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.
>
> Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

1 (1996) 4 SCC 720

> Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail."
>
> (underline supplied)

7. Under sub-section 1 of Section 389, while suspending the sentence of the appellant-accused who is in Jail, the Appellate Court has to enlarge the accused on bail till the final disposal of the appeal. The second proviso to sub-section 1 of Section 389 permits the Public Prosecutor to file an application for cancellation of the bail granted under sub-section 1. The second proviso to sub-section 1 of Section 389 is on par with sub-section 2 of Section 439 of CrPC. Therefore, the Court can even Suo Motu issue a notice calling upon the accused to show cause why the bail should not be cancelled. Under no circumstances, the bail granted to an accused under sub-section 1 of Section 389 can be cancelled without giving a reasonable opportunity to the accused of being heard.

8. Unfortunately, the High Court, without even giving an opportunity of being heard to the appellant-accused on the issue of cancellation of bail, has straight away proceeded to cancel the bail granted to him. Such approach on the part of the High Court cannot be countenanced especially when the High Court can always deal with the situation when an adjournment is sought by the advocate for the accused at the time of final hearing of the appeal on unreasonable grounds. For the default of the advocate appointed by the accused, the Appellate Court cannot penalize the accused by proceeding to cancel his bail only on the ground that his advocate has sought adjournment and that also without giving an opportunity of being heard to him on the issue of cancellation of bail.

9. We have come across cases where an application for suspension of sentence was rejected by the High Court only on the ground that the advocate for the accused declined to argue the appeal on merits. When only the application for suspension of sentence is listed for hearing, the advocate for the accused is not expected to be ready to argue the appeal.

10. Accordingly, the impugned order is hereby quashed and set aside and the earlier order dated 12th January, 2018 granting suspension of sentence and bail to the appellant is restored.

11.We make it clear that if the appellant applies for adjournment on any unreasonable or unwarranted ground, it will be always open for the High Court to proceed with the appeal by taking recourse to one of the options laid down in the case of Bani Singh[1].

12. The appeal is accordingly allowed.

Headnotes prepared by:
Nidhi Jain

Appeal allowed.