

[2022] 7 S.C.R. 505

JOSEPH JOHNSON N. MAITHKURI

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v.

SUBRAHMANYA & ANOTHER

(Criminal Appeal No. 1439 of 2022)

SEPTEMBER 09, 2022

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[M. R. SHAH AND KRISHNA MURARI, JJ.]

Bail – Cancellation of – High Court granted bail to accused persons – Original complainant has preferred appeal before the Supreme Court for cancellation of bail and submitted that in a case of co- accused, Supreme Court in Crl.A.No.39/2022 by judgment and order dated 06.01.2022 had cancelled the bail order and set aside a similar order passed by the High Court – Held: In view of the reasons stated in the judgment and order dated 06.01.2022 passed in Crl.A.No.39/2022, the impugned judgment and order passed by the High Court in the instant case releasing accused on bail deserve to be quashed and set aside – Penal Code, 1860 – ss.120(B), 302, 201, 34 IPC – Arms Act, 1959 – s. 27(3) .

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1439 of 2022.

From the Judgment and Order dated 10.06.2021 of the High Court of Karnataka at Dharwad in Criminal Petition No. 101007 of 2021.

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With

Criminal Appeal No. 1440 of 2022.

Chandrashekhar A. Chakalabbi, S. K. Pandey, Awanish Kumar, Anshul Rai, Abhinav Garg, D. Girish Kumar, Kumar Vinayakam Gupta for M/s Dharmaprabhas Law Associates, Advs. for the Appellant.

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V. N. Raghupathy, Adv. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment(s) and order(s) dated 10.06.2021 & 08.11.2021 passed by the High Court of Karnataka at Dharwad Bench in Criminal Petition Nos. 101007/2021 & 101621/2021 respectively, by which the High Court has allowed the said criminal petitions preferred by the accused Subrahmany and Rajesh (respondent No. 1 in the respective appeals) and has directed

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- A to release the accused - Subrahmanyam and Rajesh on bail in connection with Case Crime No. 157/2019 of Dharwad Rural Police Station for the offences punishable under Sections 120(B), 302, 201 read with Section 34 of the Indian Penal Code and Section 27(3) of the Arms Act, 1959, the original complainant has preferred the present appeals.
- B 2. Learned counsel appearing on behalf of the appellant – complainant has vehemently submitted that while directing the accused - respondent No. 1 in the respective appeals to be released on bail, the High Court has not at all considered the gravity of the offences. It is submitted that the High Court has not at all considered the fact that in the present case that there are two eye-witnesses and respondent No. 1 – accused has been identified.
- C 2.1 It is submitted by learned counsel appearing on behalf of the appellant that in case of co-accused, namely, Umesh Nagappa URF Sangappa, this Court vide judgment and order dated 06.01.2022 in Criminal Appeal No. 39/2022 has set aside the similar order passed by the High Court releasing the said co-accused on bail and has consequently cancelled the bail order.
- D 2.2 Learned counsel appearing on behalf of the State has supported the appellant.
- E 3. We have heard learned counsel appearing on behalf of the appellant as well as the State. Though served, none has appeared on behalf of the accused - respondent No. 1 in the respective appeals. We have perused the impugned judgment(s) and order(s) passed by the High Court releasing the accused on bail. Even liberty is reserved to the State to move for cancellation of bail in the event of this Court cancelling the bail of accused No. 4 - Umesh Nagappa URF Sangappa.
- F 4. At the outset, it is required to be noted that in the case of co-accused, namely, Umesh Nagappa URF Sangappa, who was also released on bail by the High Court, this Court vide judgment and order in Criminal Appeal No. 39/2022 has set aside the order passed by the High Court and has consequently cancelled the bail order in favour of the co-accused. The grounds on which the said co-accused was released on bail and the grounds on which the present respondent No. 1 – Subrahmanyam is released on bail are same. In paragraph 7, the High Court has observed as under: -
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“7. As per the charge-sheet, CWs. 18 and 19 are eyewitnesses to the incident. CW-19 who is running tea shop near the spot has identified accused Nos. 1,2 and 4 in Test Identification Parade held on 31.10.2019. The police took accused Nos. 1, 2 and 4 on 29.09.2019 to different places like Dandeli, Haliyal and Dharwad and taken their photographs. Therefore, the photographs of accused Nos. 1,2 and 4 were available with the police and there are every chances of the police showing them to the witnesses namely CW-19. CW-18 is another eyewitness, who is the driver of the vehicle of the deceased, who has also identified accused Nos. 1,2 and 4 in the Test Identification Parade and there are also chances of the police showing the photographs of the accused to CW-18 prior to Test Identification Parade. Even if the presence of the petitioner/accused No.5 is taken into consideration, there is no overt act alleged against him. He was sitting on bike and the overt act alleged is against accused No.1, who fired from the pistol to the deceased and went away on the motorcycle along with the accused Nos. 2 and 4. Therefore, there is no specific overt act alleged against the petitioner/accused No.4”

That thereafter this Court has set aside the order passed by the High Court by observing in paragraphs 6 to 8 as under:

“6. By observing the above, virtually the High Court has acquitted the accused. The observations made by the High Court in para 7 are on surmises and conjectures and the High Court has observed that there might have been the chances of the witnesses showing them the accused before the T.I. Parade. The fact remains that the accused have been identified in a T.I. Parade by CWs. 18 & 19, who are eyewitnesses to the incident.

7. The High Court has not at all considered the gravity of the offence while releasing the respondent No.1-accused on bail. Therefore, the judgment and order passed by the High Court releasing the Respondent No.1 on bail is unsustainable and deserves to be quashed and set aside.

8. In view of the above and for the reasons stated above, the present Appeal succeeds. The impugned order passed by the High Court in releasing the accused on bail in connection with Crime No. 157/2019 of Dharwad Rural Police Station is hereby quashed and set aside. The Respondent No.1 now to surrender

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- A before the competent authority/appropriate jail authority within a period of one week from today.
5. In view of the above and for the reasons stated in judgment and order dated 06.01.2022 passed in Criminal Appeal No. 39/2022, the impugned judgment(s) and order(s) passed by the High Court releasing the accused – Subrahmanya and Rajesh, respondent No. 1 herein in the respective appeals on bail also deserve to be quashed and set aside. At this stage, it is required to be noted that while releasing the accused Rajesh on bail the High Court in the impugned judgment and order has observed that in case this Court cancels the bail granted in favour of accused no. 4 – Umesh Nagappa URF Sangappa it would be open for the State to move an appropriate application for cancellation of the bail. Therefore, once the bail in favour of Umesh Nagappa URF Sangappa has been cancelled by this Court, the bail in the present case also requires to be cancelled.
6. In view of the above and for the reasons stated above, the present Appeals succeed. The impugned judgments and orders passed by the High Court releasing the accused Subrahmanya and Rajesh, respondent No. 1 in the respective appeals on bail in connection with Case Crime No. 157/2019 of Dharwad Rural Police Station for the offences punishable under Sections 120(B), 302, 201 read with Section 34 of the Indian Penal Code and Section 27(3) of the Arms Act, 1959 are hereby quashed and set aside. Accused Subrahmanya and Rajesh are now directed to surrender before the competent authority/appropriate jail authority within a period of two weeks from today. If the accused Subrahmanya & Rajesh do not surrender within a period of two weeks from today, the concerned police authority is directed to arrest the accused Subrahmanya and Rajesh and the learned Trial Court to issue non-bailable warrant against them.
7. However, it is observed that the learned Trial Court to decide and dispose of the trial in accordance with law and on its own merits on the basis of the evidence led before it and without, in any way, influenced by any of the observations made by the High Court in the impugned judgment(s) and order(s) which otherwise are set aside by the present order.

With this, the present Appeals are allowed.