

Supreme Court of India

State Of Punjab vs Kewal Singh And Anr. on 18 July, 1988

Equivalent citations: 1988 (36) BLJR 573, JT 1988 (3) SC 118, 1990 Supp (1) SCC 147

Author: A Sen

Bench: A Sen, B Ray

ORDER A.P. Sen, J.

1. In this appeal by special leave, the only question involved is as to the legality and propriety of the order passed by a learned Single Judge of the Punjab & Haryana High Court dated January 4, 1988 directing the release of the respondent accused persons on bail.

2. At about 6.45 a.m. , on October 3, 1986 five six persons wearing police uniforms came in a jeep No. PAT 471 entered the GOs Mess at Jalandhar and made attempt on the life of Shri J.F. Riberio, the then Director-General of Police who along with his wife Smt. Ribeiro was having a stroll in the lawn. In the encounter that followed two police personnel, keeping guard at the Mess, lost their lives. The accused persons ultimately escaped after an encounter by firing shots. The Designated Court, Jalandhar by its order dated March 20, 1987 granted bail to the accused Kulwant Singh on the ground that no role was attributed to him and it could not be said at that stage, if an offence under Sections 3 and 4 of the Terrorist & Disruptive Activities (Prevention) Act, 1987 was made out against him. It, however, rejected the application for bail filed by the remaining accused persons. Thereupon, the respondents moved the High Court under Section 439 of the CrPC, 1973 for grant of bail. A learned Single Judge by his order dated January 4, 1988 directed that respondent-accused persons be also enlarged on bail since bail had been granted to the co-accused Kulwant Singh against whom the evidence collected by the Investigating Officer is of the same type. We are of the view that the High Court had no jurisdiction to entertain an application for bail under Section 439 of the Code. See : Usmanbhai Dawoodbhai Memon and Ors. v. State of Gujarat See JT 1988(1) S.C. 539 - Ed (1988) 2 SCC 271. We accordingly grant leave, set aside the order passed by the High Court releasing the respondents on bail and direct that they be taken into custody forthwith.

3. We however wish to make it clear that the respondents may move the Designated Court for grant of bail afresh. The Designated Court shall deal with such application for bail, if filed, in the light of the principles laid down by this Court in Usmanbhai Dawoodbhai's case.