

# Mohammad Islam And Others vs State Of U.P. on 6 January, 2023

**Bench: Kaushal Jayendra Thaker, Ajit Singh**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 44

Case :- CRIMINAL APPEAL No. - 4741 of 2011

Appellant :- Mohammad Islam And Others

Respondent :- State of U.P.

Counsel for Appellant :- Raghavendra Dwivedi, A.K. Pandey, Alok Kumar Yadav, Mohd. Farooq, P

Counsel for Respondent :- Govt. Advocate, Dr. G.S.D. Mishra, Vindhyachal Singh

Hon'ble Dr. Kaushal Jayendra Thaker, J.

Hon'ble Ajit Singh, J.

On 16.05.2022, this Court had passed an order, the ultimate part is reading as follows:

"This appeal has been listed by the office under the heading of cases where the applicant is in jail for 14 years or more and the bail application is pending.

Today, no one has appeared from the side of the appellant and Sri Mohd. Farooq whose name is shown in the cause list as counsel for the appellant has sent illness slip.

The first bail application of the appellant was rejected vide order dated 29.10.2013 after noticing that it was an incident of brutal murder of a child who was kidnapped and body was cut in to parts. Thereafter, the second bail prayer of the appellant was

rejected on 7.9.2018 by a division bench. Since thereafter, no other bail application has been filed and the paper book of the appeal is ready.

At this stage, Sri H.M.B. Sinha, learned counsel for the State has pointed out that this case falls in the excepted category of heinous offences mentioned in the order dated 5.10.2021 in Saudan Singh Vs. State of U.P., therefore, it is not a case where bail should be granted as a matter of course"

Be that as it may, as none has appeared for the appellant, let the matter be listed for hearing in the next cause list.

It is made clear that if no one appears for the appellant on the next date, we may appoint an Amicus Curiae to represent the appellant, be that as it may be. The appeal today also is listed under the heading of 'cases in which the appellants in jail for more than 10 years' and the bail application is pending.

It is submitted that this is first bail application of Arif, as such this Court has observed that the first bail application of the appellant was rejected vide order dated 29.10.2013, may be it was not bail application of Arif, we give this benefit of doubt to learned counsel for the appellant, Mr. Mohd. Farooq, who only appears for Arif but once the Bench has categorically mentions that the matter would be heard finally, it is not open to the learned counsel now to argue on bail as the bail application was deemed to be rejected even on the basis of judgement of Apex Court in Criminal Appeal No. 308 of 2022 (Saudan Singh Vs. State of U.P) decided on 25.02.2022, as it was a heinous crime.

We reject his bail application once again also with exemplary cost of Rs. 5000/- as it is nothing else but wastage of Court's time when the matter is listed for final disposal. Even after 16.05.2022, the matter was listed on 30.05.2022 where:

"Learned counsel for the appellants in light of the order dated 16.05.2022 passed by co-ordinate Bench of this Court fairly submits that some reasonable time may be accorded so that the appeal may be prepared and may also be argued on merit and asked for adjournment."

Today also except Mr. Mohd. Farooq, learned counsel, none has appeared.

Issue notice to the other accused in jail as no-one appears for them.

If none appears on the next date of listing, we would appoint Amicus Curiae for all other accused except for Arif.

List the matter on 03.02.2023.

The cost be deposited within four week's from today.

Order Date :- 6.1.2023 PS