

2022 LiveLaw (SC) 755

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SURYA KANT; J., J.B. PARDIWALA; J.
SEPTEMBER 09, 2022

CRIMINAL APPEAL Nos.1535-1536 OF 2022 (Arising out of SLP(Crl.)Nos.4794-4795 of 2022)
STATE OF JHARKHAND versus SALAUDDIN KHAN

Code of Criminal Procedure, 1973; Section 439 - Bail - The offer of payment of ad interim compensation to the victim cannot be a ground to release the accused on bail. (Para 7)

(Arising out of impugned final judgment and order dated 08-02-2021 in BA No.8110/2020 and order dated 26-03-2021 in CRMP No.675/2021 in B.A.No.8110 of 2020 passed by the High Court of Jharkhand at Ranchi)

For Petitioner(s) Mr. Barun Kumar Sinha, AAG Mr. Vishnu Sharma, Adv. Ms. Tulika Mukherjee, AOR Mr. Shwetank Singh, Adv. Mr. Beenu Sharma, Adv.

ORDER

1. Leave granted.
2. The appellant - State of Jharkhand has challenged the order dated 08.02.2021 whereby the respondent was ordered to be released on bail. The appellant has also challenged order dated 26.03.2021 whereby on an application moved for modification of order dated 08.02.2021, the bail condition regarding grant of interim compensation has been clarified to the extent that the same was to be given to only one victim.
3. The allegations against the respondent are that while two minor girls aged 14 and 15 years were going to Pragya Kendra for updating their pass books, the respondent and four other accused apprehended and forcefully picked them on their motorcycles and then gang raped them. FIR No.56 of 2020 was registered against them under Sections 341, 342 and 376(D) IPC and under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO') besides Section 3(4)(w)(i) of the SC/ST Act. The victims in their statements under Section 164 Cr.P.C. have supported the allegation of sexual assault on them. Some of the eye-witnesses are also stated to have given their statements under Section 164 Cr.P.C. in support of the prosecution case.
4. The respondent was arrested on 13.08.2020 and the High Court has released him on bail vide order dated 03/08.02.2021 without adverting to the merits of the case only on the ground that one of the co-accused person has already been enlarged on bail by the co-ordinate Bench vide order dated 04.01.2021, and that the respondent is ready to deposit *ad interim* compensation amount of Rs.1,00,000/- in favour of the victim.
5. Vide order dated 20.05.2022, notice was issued to the respondent and as per the Office Report dated 07.09.2022 the same has been delivered on him on 05.08.2022 but no one has entered appearance on his behalf so far.
6. We have heard learned Additional Advocate General appearing on behalf of the appellant – State of Jharkhand and carefully perused the material placed on record.

7. In our considered opinion, the High Court has not adverted to the parameters of Section 439 Cr.P.C. which are required to be observed while granting or declining regular bail to an accused, specially when he is involved in a heinous crime. The offer of payment of *ad interim* compensation to the victim cannot be a ground to release the accused on bail. We, therefore, do not subscribe to the reason(s) assigned by the High Court while releasing the respondent on bail.

8. In such circumstances, the appeals are allowed and the impugned orders dated 08.02.2021 and 26.03.2021 are set aside. The High Court is requested to hear and dispose of the bail application of the respondent on merits within a period of three months. Till such time, the respondent shall be taken into custody and his bail bond stands cancelled.

9. We make it clear that we have not expressed any opinion on the merits of the case and the bail application of the respondent shall be decided by the High Court on its own merit and in accordance with law.

10. As a sequel to the above, pending interlocutory applications also stand disposed of.

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