

0ITEM NO.13

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 4685/2020

(Arising out of impugned final judgment and order dated 15-11-2019 in CRLA No. 414/2015 passed by the High Court Of Andhra Pradesh At Amravati)

GOPISETTY HARIKRISHNA

Petitioner(s)

VERSUS

STATE OF ANDHRA PRADESH

Respondent(s)

([FOR REPORT COMPLIANCE AND FURTHER CONSIDERATION])

IA No. 87106/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 09-05-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT  
HON'BLE MR. JUSTICE S. RAVINDRA BHAT  
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA  
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Petitioner(s) Ms Mahalakshmi Pavani, Senior Advocate  
Ms Revathy Raghavan, AOR  
Ms Divya Singhvi, Adv.  
Ms Neha syal, Adv.  
Ms Jeyam, Adv.

For Respondent(s) Mr. S. Niranjan Reddy, Senior Advocate  
Mr. Mahfooz A. Nazki, AOR  
Mr. Polanki Gowtham, Advocate  
Mr. Shaik Mohamad Haneef, Advocate  
Mr. T. Vijaya Bhaskar Reddy, Advocate  
6. Ms. Rajeswari Mukherjee, Advocate  
Mr. K.V.Girish Chowdary, Advocate  
Ms. Akhila Palem, Advocate  
Mr. Abhishek Sharma, Advocate  
Mr. Sahil Raveen, Advocate

UPON hearing the counsel the Court made the following  
O R D E R

On 28.09.2020 following order was passed by this Court:

"Delay condoned.

Issue notice on the nature of offence and sentence,

returnable on 06.11.2020.

Dasti in addition.

Liberty to serve the learned Standing Counsel for the State.

Ms. Mahalakshmi Pavani, learned Senior Advocate submits that the petitioner has been in custody since 12.05.2011 and has thus completed more than 9 years of actual imprisonment.

Considering the entirety of the matter, we grant interim bail to the petitioner.

The petitioner shall be produced before the Trial Court within three days from today and the Trial Court shall release him on interim bail on such terms and conditions as the Trial Court may deem appropriate.

Liberty is granted to the petitioner to file additional documents."

Despite the aforestated order the petitioner was not bailed out and was still kept in custody, which aspect is clear from the facts recorded in the subsequent order dated 20.04.2022. The order dated 25.04.2022, thereafter passed certain directions seeking explanation from the concerned Police and Jail officials.

The response filed on behalf of the Superintendent, Central Prison, Nellore states that the order dated 28.09.2020 was received in the Prison on 06.10.2020 at which point in time, because of Covid-19 Pandemic restrictions, the movement of the prisoner was not immediately possible. However, the bail application on behalf of the prisoner was prepared on 22.10.2020 and was filed in Court on 29.10.2020. The application came up before the Court on 29.10.2020 when the concerned Court passed the following order:

"How the petition is maintainable after expiry of time as per orders of Supreme Court.

Hence, returned."

The resultant effect was that despite the order, the petitioner continued to be in custody.

The explanation given by the Registry of this Court shows that the order was transmitted through electronic mode immediately but the physical copy was sent in due course, which is why it was received in the Jail on 06.10.2020.

This case portrays very sorry state of affairs.

The reason why stipulation was inserted in the order that "the petitioner shall be produced before the Trial Court within three days and the Trial Court shall release him on interim bail" was to expedite the process. The reason was not to put any limitation of a specified period within which time alone the bail could be availed and not thereafter. The order was construed by the concerned Trial Court as if, after the expiry of three days, the petitioner had no right to be released on bail.

We are surprised that a Judicial Officer had read the order passed by this Court, in the manner as it gets disclosed from his order.

We would normally have considered it as defiance of the order passed by this Court but at this stage we rest content by observing that the High Court shall take up the matter on its Administrative Side; call for an explanation from the concerned Presiding Officer of the Trial Court and deal with the matter on the administrative side.

This is not to say that whatever we have observed shall be taken as final determination. The matter shall be dealt with purely on its merits on the administrative side.

This also poses a question whether similar kind of situations

have arisen or do arise despite the order passed by this Court. A corrective mechanism shall therefore, have to be put in place, especially where the proceedings are initiated through the Legal Services Authority.

We, therefore, pass following general directions:-

1) Every High Court shall give us details of all such orders which remain to be complied with and about the persons concerned who are still languishing in jail.

One of the ways to address the problem would be to have a register and maintain the figures as to in how many matters orders directing release of the persons on bail were issued and if out of such total number of matters, any person stood deprived of the opportunity of being released on bail for some reason or the other. The Register must indicate the reason including whether proper security etc. could be arranged by the concerned person or not.

Such matters should then be listed before the concerned court in the succeeding month and the fact that the person has not yet been released on bail, be brought to the notice of the concerned Court under whose orders the relief of bail was afforded to the person(s).

2) Let the details be given by each High Court within six weeks from today.

Before parting, we must record that the petitioner has now been released on bail. In effect, where the custody of a person for 9 years was found to be sufficient to entitle him to be released on bail, is now turned into custody for 11 years. This is nothing but

reincarnation of Hussainara Khatoon<sup>1</sup> & Motil Ram<sup>2</sup>.

We must observe that these matters be taken with utmost seriousness by the High Court and by all the concerned. Let copies of this Order be sent to all the High Courts.

List the matter on 11.07.2022.

(INDU MARWAH)  
COURT MASTER (SH)

(VIRENDER SINGH)  
BRANCH OFFICER

1 (1980) 1 SCC 31

2 (1978) 4 SCC 47