

Salim Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-27-2002

Reported in : 2003(2)ALD(Cri)7; 2003CriLJ1865

Judge : B.K. Rathi, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 439

Appeal No. : Bail Appln. No. 18233 of 2002

Appellant : Salim

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Brij Raj Singh, Adv.

Disposition : Application rejected

Judgement :

ORDER

B.K. Rathi, J.

1. The first bail application of the applicant was rejected on 8-8-2001. Second bail application of the applicant was rejected on 24-7-2002. This is the third application for bail.

2. I have heard Shri Brij Raj Singh, learned counsel for the applicant and the AGA.
3. The case of prosecution in brief is that two boys were kidnapped and the applicant and other two accused demanded a ransom of Rs. 6 lacs for their return. Accordingly, time and place for payment and return of boys was fixed. The applicant and two other accused reached at the appointed time where they were arrested and the two kidnapped boys were recovered at their, pointing out.
4. This bail application has been pressed on the ground that other co-accused of this case Shamshul has already been released by Hon'ble Mr. Justice Imtiyaz by order dated 14-3-20002. That allegation against the applicant are identical and therefore he is entitled to bail on the ground of parity.
5. The learned counsel for the applicant in support of the argument has referred to several cases.
6. The first case is a Division Bench decision of this Court in Nanha v. State of U.P. 1993 All Cri C 281 : (1994 All LJ 328). It was held in this case that :

'If on examination of a given case it transpires that the case of the applicant before court is identical, similar to the accused, on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should also be released on bail.'

The other decision referred to is on the case of Shobha Ram v. State of U.P. 1992 All Cri C 59 : (1992 Cri LJ 1371). In this case considering the various decisions of this Court it was held that if allegations against the two accused are identical and one of them has been released on bail the other is entitled to bail on the ground of parity.

7. The last case referred to is the decision of Supreme Court in Kallu v. State of U.P. 1989 All WC 65 : (1989 All LJ 1339). In this case two separate special leave petitions were filed by the different accused persons against same judgment of the High Court. The Special leave petitions were heard by different Benches. One Bench dismissed the S.L.P. while the other Bench partly allowed the S.L.P. and reduced the sentence. Therefore the Apex Court reviewed the order of dismissal

of one S.L.P. and also reduced the sentence of the accused whose S.L.P. was dismissed to maintain parity.

8. The above decision of the Apex Court is in the different context and cannot be applied in the matter of bail.

9. As regards the other two decisions of this Court referred to by the learned counsel, the same cannot be followed as they stood impliedly overruled by the decision of Apex Court in Special Leave to Appeal (Criminal) No. 4059 of 2000 *Rakesh Kumar Pandey v. Munni Singh* decided on 12-3-2001. In this case the bail was granted by the High Court on the ground of parity. The Apex Court while cancelling the bail granted on the ground of parity observed :

'The High Court on being moved, has considered the application for bail and without bearing in mind the relevant materials on record as well as the gravity of offence released the accused respondents on bail, since the co-accused, who had been ascribed similar role, had been granted bail earlier'

The Apex Court expressed its dissatisfaction in the manner of granting bail on the ground of parity in heinous offences. It observed that the order of the High Court suffers from gross illegality. It was held that the High Court has totally erred in releasing the accused respondent on bail and that order cannot be sustained.

10. The offence of the present case is extremely heinous. Two boys were kidnapped and were recovered from the custody of the applicant and other accused. Therefore, parity is not a ground for grant of bail.

11. I do not find any fresh ground for bail. The request for bail is, therefore, rejected.