

Court No. - 1

Case :- CRIMINAL APPEAL No. - 973 of 2012

Appellant :- Mohd. Saeed @ Lala And Ors.

Respondent :- State of U.P.

Counsel for Appellant :- Arshad Ahsan
Siddiqui,Ashish Kumar Maurya,Gopesh
Tripathi,Jaikaran,Shishir Pradhan,Udai Pratap Singh

Counsel for Respondent :- Govt. Advocate,Ankush
Pandey,Gopesh Tripathi,Prabhu Ranjan Tripathi

and

Case :- CRIMINAL APPEAL No. - 1127 of 2012

Appellant :- Mohammad Safeer And Ors.

Respondent :- State of U.P.

Counsel for Appellant :- U.P. Singh,Ali
Hasan,Jaikaran,Rajesh Mishra,Rohit Tripathi,Shishir
Pradhan,Shishir Srivastava,Syed Zulfiqar Husain
Naqv,Zahir U. Ansari

Counsel for Respondent :- Govt. Advocate,Ankush
Pandey,Gopesh Tripathi,Himanshu Pandey,Prabhu
Ranjan Tripathi

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Ajai Kumar Srivastava-I,J.

**(C.M. Application No.IA/13 of 2024 : Application
for Cancellation of Bail in Criminal Appeal No.973
of 2012)**

**(C.M. Application No.IA/24 of 2024 : Application
for Cancellation of Bail in Criminal Appeal
No.1127 of 2012)**

1. We have heard Sri Prabhu Ranjan Tripathi, learned
counsel for the applicant, Sri Shishir Pradhan, learned
counsel for the accused-appellant/ applicant No.3, Sajid
(in Criminal Appeal No.973 of 2012) and appellant/

applicant No.2, Mohammad Jahir @ Munne (in Criminal Appeal No.1127 of 2012) and Sri Umesh Chandra Verma, learned A.G.A. for the State.

2. No one has appeared on behalf of accused-appellants/ applicants No.3 and 5, namely, Autar alias Ram Autar and Sadakat Husain (in Criminal Appeal No.1127 of 2012).

3. The aforesaid applications for cancellation of bail of appellant/ applicant No.3, Sajid (in Criminal Appeal No.973 of 2012) and appellants/ applicants No.2, 3 and 5, namely, Mohammad Jahir @ Munne, Autar alias Ram Autar and Sadakat Husain (in Criminal Appeal No.1127 of 2012), have been filed by the son of one of the deceased, Abbas.

4. The aforesaid four appellants/ applicants, namely, Sajid, Mohammad Jahir @ Munne, Autar alias Ram Autar and Sadakat Husain have been released on 11.03.2024 by the Chief Judicial Magistrate concerned on furnishing bail bonds and sureties to the satisfaction of the Chief Judicial Magistrate concerned in compliance of the order dated 10.01.2024 passed by a Division Bench of this Court at Allahabad in **Criminal Appeal No.165 of 2016** titled as **Ganesh vs. State of U.P.**

5. The aforesaid order dated 10.01.2024 passed in **Ganesh's case (supra)** gave rise to a reference before the Full Bench of this Court on the following two questions :-

""(1) Whether the directions issued by the Division Bench in Ganesh (supra) that

too general directions, commanding the Chief Judicial Magistrates to release convicts whose applications for remission/premature release have remained pending beyond a particular period, as interim measure, till disposal of the said applications, is in accordance with law especially in view of the Constitution Bench decision in V. Sriharan @ Murugan and others (supra) and H. Nilofer Nisha (supra)?

(2) Whether the High Court in exercise of its criminal appellate jurisdiction under the Code of Criminal Procedure read with Section 482 Cr.P.C. can confer jurisdiction upon the Chief Judicial Magistrates/Magistrates in the District Courts which the law otherwise does not confer upon them?" "

(emphasis supplied by us)

6. The reference on the aforesaid questions was answered by the Full Bench in paragraph No.21 as under :-

"21. We, accordingly answer the aforesaid questions as under:-

(1) The Division Bench in Ganesh (Supra) could not have issued any direction for granting the general directions of bail commanding the Chief Judicial Magistrates to release convicts whose applications for remission/premature release have remained pending beyond a particular period, as interim measure, till disposal of the said applications.

(2) Learned AGA submits that there is no power vested by the High Court in the Chief Judicial Magistrates for grant of bail. The said power is already exercised by granting bail to all such persons and the Chief Judicial Magistrate is directed only to release such person(s) whose applications are pending beyond a particular time by accepting their bail/surety bonds. However, we leave the said

question unanswered as in Question-A, we have already held that the directions of the Division in Ganesh (Supra) are not as per law."

7. Admittedly, the appellants mentioned above in the two appeals were released on 11.03.2024 by the Chief Judicial Magistrate concerned in compliance of the order dated 10.01.2024 passed by a Division Bench of this Court at Allahabad.

8. Two situations arose before this Court: first, what would be the fate of those convicts whose release stood affected on account of an interim stay granted by the Full Bench on 09.04.2024, and second, what would be the fate of those convicts who were released prior to the interim order, upon the final judgment being rendered by the Full Bench in answering the questions of reference, as mentioned above.

9. We have no *iota* of doubt that once the Full Bench has answered the questions, holding that the Division Bench in **Ganesh's case (supra)** could not have issued any direction for granting the general directions of bail commanding the Chief Judicial Magistrates to release convictions whose applications for remission/premature release have remained pending beyond a particular period, as interim measure, till disposal of said applications.

10. It is under these circumstances, the instant two applications have come to be filed by the son of one of the deceased, Abbas, insofar as the aforementioned appellants in the criminal appeals mentioned above are concerned. As the position of law is clear as stated

above, it is appropriate that the aforementioned appellants be afforded an opportunity to surrender before the Chief Judicial Magistrate concerned within a period of four weeks from today, who shall take them into custody for being lodged in the respective jails where they were lodged before their release.

11. In case, the aforesaid appellants failed to surrender before the Chief Judicial Magistrate concerned, the Chief Judicial Magistrate concerned shall issue non-bailable warrants securing presence of aforementioned appellants, namely, Sajid (in Criminal Appeal No.973 of 2012) and appellants/ applicants No.2, 3 and 5, namely, Mohammad Jahir @ Munne, Autar alias Ram Autar and Sadakat Husain (in Criminal Appeal No.1127 of 2012), for being lodged in jail.

12. The applications bearing C.M. Application No.IA/13 of 2024 in Criminal Appeal No.973 of 2012 and C.M. Application No.IA/24 of 2024 in Criminal Appeal No.1127 of 2012 are, accordingly, **disposed of.**

13. List the appeals after six weeks.

14. Since there may be many other cases where pursuant to order dated 10.01.2024 passed by a Division Bench of this Court in **Ganesh's case (supra)**, many more convicts may have been released and, in relation thereto, it may not be appropriate for us to pass a general order unless necessary details are known to this Court and the outcome of the remission applications as well.

15. In these circumstances, we deem it appropriate to

direct the State to file an affidavit before this Court to place the details as to the number of convicts, who have been released by the Chief Judicial Magistrate concerned pursuant to order dated 10.01.2024 passed by the Division Bench in **Ganesh's case (supra)**. The affidavit shall also indicate as to how many such released convicts have been given benefit of remission by the State.

16. On filing of such affidavit positively within a period of three weeks from today, necessary orders shall be passed.

17. We direct the Registrar General of this Court to circulate a copy of this order to all the Chief Judicial Magistrates for information and necessary compliance.

(A.K. Srivastava-I, J.) (A.R. Masoodi, J.)

Order Date :- 19.9.2024
cks/-