

ITEM NO.16

COURT NO.5

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Miscellaneous Application No.2032/2023 in SLP(Cr1) No. 2091/2021

(Arising out of impugned final judgment and order dated 26-10-2021 in SLP(Cr1) No. No. 2091/2021 passed by the Supreme Court Of India)

JITENDRA CHAMPALAL KANUNGO & ANR.

Petitioner(s)

VERSUS

STATE OF U.P. & ORS.

Respondent(s)

(FOR ADMISSION and IA No.176672/2023-EXEMPTION FROM FILING O.T. and IA No.176671/2023-APPROPRIATE ORDERS/DIRECTIONS)

WITH

MA 2033/2023 in SLP(Cr1) No. 3393/2021 (II)

(FOR ADMISSION and IA No.181773/2023-EXEMPTION FROM FILING O.T. and IA No.181771/2023-APPROPRIATE ORDERS/DIRECTIONS)

MA 2034/2023 in SLP(Cr1) No. 2260/2021 (II)

(FOR ADMISSION and IA No.181761/2023-EXEMPTION FROM FILING O.T. and IA No.181759/2023-APPROPRIATE ORDERS/DIRECTIONS)

Date : 26-09-2023 These MAs were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE DIPANKAR DATTA

For Petitioner(s) Mr. Basant. R, Sr. Adv.
Ms. Pratiksha Sharma, AOR
Mr. Kavinesh Rm, Adv.
Mr. Ankit Acharya, Adv.
Ms. Ritu Chaudhary, Adv.
Mr. Shivam Kunal, Adv.

Mr. Syed Shahid Hussain Rizvi, AOR

For Respondent(s) Mr. Vikas Bansal, Adv.
Mr. Ankit Goel, AOR

Mr. Syed Shahid Hussain Rizvi, AOR
Mr. Zeeshan Rizvi, Adv.

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

1. The complainant-respondent No.3 (Rahul Sood) seeks direction to the Trial Court to release the amount of Rs.1 crore

(with interest thereon), which was deposited by the non-applicants/petitioners, in terms of the order dated 26.10.2021 passed by this Court while granting anticipatory bail to them.

2. A perusal of the order dated 26.10.2021 reveals that this Court *prima facie* found that : (i) The genesis of the criminal proceedings lies in a civil dispute; (ii) The petitioners agreed to deposit a sum of Rs.1 crore, upon which this Court was inclined to grant interim protection to them; (iii) The interim protection was granted subject to the condition that they shall cooperate with the Investigating Agency; and (iv) It was left to the discretion of the Trial Court to release the amount of Rs.1 crore along with interest, if any, in favour of respondent No.3/complainant and such an arrangement was without prejudice to the rights and contentions of the parties.

3. The complainant/respondent No.3 has now averred that after obtaining pre-arrest bail, the petitioners are not appearing before the Trial Court, due to which, no effective steps towards conclusion of the trial have taken place. The grievance of the complainant is that the Trial Court has unreasonably declined to release the amount of Rs.1 crore in his favour.

4. *Per contra*, learned Senior Counsel appearing on behalf of the non-applicants/petitioners submits that an application for discharge moved by the petitioners is pending before the Trial Court and the complainant/respondent No.3 has failed to file any reply thereto, which has caused the delay.

5. Having heard learned Senior Counsel/learned counsel for the parties, we deem it appropriate to issue the following directions:

(i) The applicant/complainant shall file reply to the discharge application (filed by the non-applicants/petitioners) within two weeks;

(ii) On doing so, the Judicial Magistrate-cum-Civil Judge (Jud.Div.), FTC (CAW), Kanpur Nagar, before whom the trial is pending, is directed to decide the discharge application within a period of

one month from the date of filing of reply by the complainant/respondent No.3; and

(iii) In case the discharge application is declined, the above-mentioned Court is further directed to decide the framing of charges within a period of one month thereafter.

6. The petitioners-accused shall file an undertaking that as and when they are granted exemption from personal appearance, they shall have no objection if the trial proceedings are conducted in their absence and that their counsel(s) shall remain present on each and every date of hearing.

7. The Presiding Officer shall not adjourn the proceedings on account of the fact that the accused have been granted exemption from personal appearance or their counsel are not present.

8. A compliance report be sent to this Court before the next date of hearing.

9. Post these matters for hearing on 16.01.2024.

(SATISH KUMAR YADAV)
DEPUTY REGISTRAR

(PREETHI T.C.)
COURT MASTER (NSH)