

ITEM NO.47+68

COURT NO.9

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). 10356/2022

(Arising out of impugned final judgment and order dated 29-10-2022 in CRLRC No. 699/2022 passed by the High Court For The State Of Telangana At Hyderabad)

RAMACHANDRA BARATHI @ SATHISH
SHARMA V.K. & ORS.

Petitioner(s)

VERSUS

THE STATE OF TELANGANA

Respondent(s)

(IA No. 164958/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

Diary No. 37248 of 2022

(IA No. 178117/2022 - EXEMPTION FROM FILING C/C/ OF THE IMPUGNED JUDGMENT AND IA NO. 178112/2022-INTERVENTION/IMPLEADMENT AND I.A. NO. 178115/2022- PERMISSION TO FILE PETITION.

Date : 21-11-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE VIKRAM NATH

For parties(s)

Mr. Atmaram S. Nadkarni, Sr. Adv.
Mr. Sidharth Dave, Sr. Adv.
Mr. Piyush Beriwal, AOR
Ms. Divya Srivastava, Adv.
Ms. Vidhi Thaker, Adv.Mr. Dushyant Dave, Sr. Adv.
Mr. Sidharth Luthra, Sr. Adv.
Mr. Dama Sashadari Naidu, Sr. Adv.
Mr. J. Rama Chandra Pal, Sr. Adv. (AAG)
Mr. P. Mohith Rao, Adv.
Mr. Rohit Kumar Singh, AOR
Mr. N. Srinivas, Adv.
Ms. Sweena Nair, Adv.
Mr. S.. Udaya Kumar Sagar, AORMr. Angaj Gautam, Adv.
Mr. Sarthak Karol, Adv.

Mr. Tanmay Mehta, Adv.
Mr. Sourabh Gupta, Adv.
Mr. Puneet Yadav, Adv.
Mr. Abhay Singh, Adv.
Mr. Parijat Kishore, AOR

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

This petition challenges the judgment and order dated 27.10.2022 passed by the learned Single Judge of the High Court For The State Of Telangana at Hyderabad in CRLRC No. 699 of 2022.

The revision arises out of the order passed by the learned 1st Additional Session Judge dated 27.10.2022 for SPE and A.C.B. cases at Hyderabad, vide which the learned Judge had rejected the remand application made by the Police for remand of the petitioners. This was basically done by the learned Trial Judge on the ground that the mandatory notice under Section 41A of Code of Criminal Procedure was not issued to the accused persons.

The same was challenged by the State before the High Court. The State argued that the observations made in the case of Arnesh Kumar Vs. State of Bihar and Another would not be applicable to the facts of the present case. Per contra, the petitioners accused strongly relied on the observations made in Arnesh Kumar (Supra), particularly, in paragraph 11.4 thereof.

Pursuant to the order dated 04.11.2022 passed by this Court, the application for bail was considered by the trial Judge and rejected on 14.11.2022. The petitioners would still have a right to apply to the High Court for consideration of the regular bail.

In that view of the mater, we are not inclined to entertain the present petition.

However, we find the approach of the learned Single Judge of the High Court in dealing with the present matter was totally untenable.

Though, it is always said that the High Court is not a Court to subordinate to the Supreme Court. However, when the High Court deals with judgments of this Court, which are binding on everyone under Article 141 of the Constitution of India, it is expected that the judgments have to be dealt with due respect.

The learned Single Judge of the High Court in the impugned judgment has observed thus:

"27. A parental guidance by the Supreme Court through the judgment in Arnesh Kumar's case is thus not a sword of Damocles either in respect of police officers or Magistrates who exercise the power of arrest and remand respectively."

With great respect to the learned Judge, such observation is totally unwarranted.

We further find that the reasoning on which the revision

has been allowed is also not sustainable.

We find that the observations made in paragraph 42 onwards of the impugned order are also not in tune with the observation made by this Court in the case of Arnesh Kumar (Supra).

We, therefore, dispose of the petition by observing that the observations made in the judgment in Criminal Revision Case No. 699 of 2022 which are contrary to the observations made in the case of Arnesh Kumar (Supra) would not be treated as a binding precedent in the State of Telangana.

We request the High Court to consider the bail application, if so filed by the petitioners, expeditiously, since the petitioners are behind the bar for 22 days.

Pending application(s), if any, stand(s) disposed of.

Diary No. 37248 of 2022

Permission to file special leave petition is granted.

Learned senior counsel appearing for the petitioner(s) as well as learned counsel for the respondent-State agree that the matter needs to be reconsidered by the learned Single Judge on its own merits without being influenced by the observations made by the Division Bench.

Even otherwise, we find that some of the directions which are issued by the learned judges of the Division Bench are not sustainable in law.

The impugned judgment(s) and order(s) dated 15.11.2022 passed by the Division Bench is, therefore, quashed and set aside.

The learned Single Judge is requested to consider the writ petition(s) filed by the present petitioner(s) on its own merits and in accordance with law, as expeditiously as possible and preferably within four weeks from today.

We are inclined to make the aforesaid request since we are informed that the writ petition filed by the present petitioner(s) is already fixed for 29.11.2022 before the learned Single Judge of the High Court.

The special leave petition is disposed of accordingly.

Pending application(s), if any, stand(s) disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(ANJU KAPOOR)
COURT MASTER (NSH)