

#23

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17th February, 2016

+ CRL. APPEAL 23/2007

UDAIBIR

..... Petitioner

Through None

versus

STATE

..... Respondent

Through Ms. Radhika Kolluru, APP for State
SI Sumer Chand, P.S. Nabi Karim

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an appeal assailing the impugned judgment dated 29th September, 2006 passed by the learned Additional Sessions Judge, Delhi in SC No. 12/05 in FIR No. 66/2000 registered at Police Station- Nabi Karim, Delhi, under Section 302 IPC whereby the appellant has been convicted of culpable homicide not amounting to murder and convicted under Section 304 (Part-I) IPC. By way of order on sentence dated 6th October, 2006, the appellant was sentenced to undergo imprisonment for a period of five years and to pay a fine of Rs. 1,000/- with the stipulation that in default of payment of fine, the appellant shall undergo further imprisonment for a period of three months.

2. The present appeal came to be admitted on 23rd March, 2007 and the substantive sentence awarded to the appellant was suspended and he was directed to be released on bail by way of order dated 16th April, 2007 passed by this Court.

3. This Court issued Non-Bailable Warrants against the appellant on 27th January, 2009 and forfeited his bail bond. It was also directed to issue notice to the appellant's surety. Thereafter, in response to the notice of default being issued to the counsel for the appellant by way of order dated 24th September, 2013 passed by this Court, a report was filed by the registry to the effect that counsel appearing on behalf of the appellant had stated that the latter had not contacted him ever since the year 2008 and that his whereabouts were unknown to him.

4. Eventually, by way of order dated 23rd October, 2013, bailable warrants were issued against the surety of the appellant, who happens to be his father. As recorded in the order dated 2nd December, 2013, the surety of the appellant stated that the appellant has not remained in touch with him for the last three years and that he is unaware of his whereabouts. In those circumstances, the personal bond of the appellant as also the amount of surety was forfeited by this Court by way of the said order dated 2nd December, 2013 and learned counsel appearing on behalf of the appellant was directed to address arguments in the

case.

5. None appeared on behalf of the appellant thereafter on subsequent dates of hearing and Non-Bailable Warrants issued for the production of the appellant herein have remained unexecuted.

6. It is urged by Ms. Radhika Kolluru, learned APP appearing on behalf of the official respondent that the surety appeared before the Trial Court and surrendered the surety amount. Ever since then, none appears on behalf of the appellant herein.

7. The Hon'ble Supreme Court has in the case of *Surya Baksh Singh vs. State of Uttar Pradesh* reported as (2014) 14 SCC 222, in paragraphs 25 and 26 held as follows:-

“25. The enunciation of the inherent powers of the High Court in exercise of its criminal jurisdiction already articulated by this Court on several occasions motivates us to press Section 482 into operation. We reiterate that there is an alarming and sinister increase in instances where convicts have filed appeals apparently with a view to circumvent and escape undergoing the sentences awarded against them. The routine is to file an appeal, apply and get enlarged on bail or get exempted from surrender, and thereafter wilfully to become untraceable or unresponsive. It is the bounden duty cast upon the Judge not merely to ensure that an innocent person is not punished but equally not to become a mute spectator to the spectacle of convict circumventing his conviction. (See *Stirland v. Director of Public Prosecutions*, 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* (2003) 11 SCC 271). If the Court is derelict in doing its duty, the social fabric will be rent asunder and anarchy will rule everywhere. It is, therefore, imperative to put an end to such practice by the expeditious disposal of appeals. The inherent powers of the High Court, poignantly preserved in Section 482 Cr.P.C., can also be pressed into service but with care, caution and circumspection.

26. Reverting back to the facts of the present case a perusal of the impugned order makes it abundantly evident that the High Court has

considered the case in all its complexities. The argument that the High Court was duty-bound to appoint an amicus curiae is not legally sound. Panduranga correctly considers *Mohd. Sukur Ali v. State of Assam (1996) 4 SCC 729* as per incuriam, inasmuch as the latter mandates the appointment of an amicus curiae and is thus irreconcilable with Bani Singh. In the case in hand the High Court has manifestly discussed the evidence that have been led, and finding it of probative value, has come to the conclusion that the conviction is above Appellate reproach correction and interference. In view of the analysis of the law the contention raised before us that it was essential for the High Court to have appointed an amicus curiae is wholly untenable. The High Court has duly undertaken the curial responsibility that fastens upon the Appellate Court, and cannot be faulted on the approach adopted by it. In this respect, we find no error.”

8. A similar view had been articulated by this Court in the case of ***Mukesh vs. State*** reported as ***152 (2008) DLT (DB) 201***.

9. The enunciation of law in the above stated decisions is that; if at the end of the entire exercise of proceedings against the persons who stood surety at the time when the convict was granted bail; and confronted with the situation of continuous absence of the appellant as well as his counsel, the criminal justice delivery system cannot be held to ransom and the inherent powers of the High Courts under Section 482 of the Code of Criminal Procedure, 1973 must be pressed into action to dismiss the appeal. A convict cannot be permitted to circumvent his conviction and defeat criminal justice.

11. Coming to the present appeal, it is evident that the routine of filing an appeal, applying and being enlarged on bail and thereafter wilfully becoming untraceable and irresponsive has been the approach of the appellant in the present appeal.

12. The present is a manifestation of the alarming and sinister increase in the instances where convicts have filed an appeal apparently with a view to circumvent and escape undergoing the sentence awarded against them.

13. Consequently, the present appeal is hereby dismissed.

SIDDHARTH MRIDUL, J

FEBRUARY 17, 2016

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