

2023 LiveLaw (SC) 64

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
AJAY RASTOGI; J., BELA M. TRIVEDI; J.**

JANUARY 20, 2023

CRIMINAL APPEAL NO. _____ OF 2023 (Arising out of SLP (Crl.) No(s) . 9601/2022)

RAHUL SHARMA *versus* STATE OF UTTAR PRADESH & ANR.

Code of Criminal Procedure; Section 438 - Dismissal for default / non prosecution of bail application - Practice adopted by the High Court in passing orders for dismissal of bail application in default disapproved.

(Arising out of impugned final judgment and order dated 27-09-2022 in CRMABA No. 12145/2021 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Mr. Ashwani Bhardwaj, AOR Dr. Ashwani Bhardwaj, Adv. Mr. Kunal K Jain, Adv. Mrs. Vinay Bhardwaj, Adv. Ms. Priya Sharma, Adv. Ms. Lalita Rani, Adv.

For Respondent(s) Mr. Sarvesh Singh Baghel, AOR Ms. Shweta Yadav, Adv. Mr. Dhruv Surana, Adv. Mr. Rohit Amit Sthalekar, AOR Ms. Ravina Sharma, Adv. Mr. Tushar Mehta, SGI Ms. Aishwarya Bhati, ASG Mr. Nikhil Goel, Adv. Mr. Yashvardhan, Adv. Ms. Smita Kant, Adv. Mr. Apoorv Shukla, AOR Mr. Puneet Chahar, Adv. Ms. Prabhleen Apoorv Shukla, Adv. Ms. Kritika Nagpal, Adv. Ms. Ishita Farsaiya, Adv. Ms. Sonali Suryawanshi, Adv. Ms. Shreeya Jain, Adv. Ms. Shagun Thakur, Adv.

ORDER

Leave granted.

This unusual appeal has been thrust upon the appellant assailing order dated 27.09.2022 pursuant to which the bail application filed at his instance under Section 438 of the Cr.P.C. came to be dismissed by the High Court for non-prosecution.

In compliance of the order of this Court dated 25.11.2022, the Registrar of the High Court of Judicature, Allahabad has filed affidavit from where it reveals that the bail application filed at the instance of the appellant came to be listed in the first instance on 02.07.2021 and interim protection was granted to him and thereafter the matter came before the Court almost after an year on 27.09.2022 and this is the fateful day for him on which because of his non-appearance bail application was dismissed for non-prosecution which is before this Court.

Learned counsel for the appellant has placed on record almost 50 consistent orders passed by one Court on 27.09.2022 dismissing the bail application filed under Section 438 of the Code by the individual applicants for non-prosecution and the orders are in the standard format passed by the Court.

In the first instance, we disapprove such practice adopted by the High Court in passing orders for dismissal of bail application in default. At the same time, it was not fair on part of the appellant also not to put appearance on the date when the matter was listed. He too was at liberty to make an application for recalling of the order dated 27.09.2022 which is assailed before this Court.

After hearing learned counsel for the parties and taking into consideration the material on record, we are of the considered view that the dismissal of the bail application filed at the instance of the appellant in default on 27.09.2022 is not justified and, accordingly, we set aside the order dated 27.09.2022.

The appeal is, accordingly, allowed and the bail application being CRMABA No. 12145 of 2021 is restored on the file of the High Court with a request that the same be heard on its own merits expeditiously in accordance with law. In the meanwhile, there shall be a stay on arrest for a period of four weeks.

Let the matter be come up before the High Court on 30.01.2023.