

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2020.

IN THE MATTER OF: -

POSITION OF PARTIES

	Trial Court	High Court	Supreme Court
Shahvaz Hussain @ Shahbaz Ahmed @ Shanu			

Accused

Petitioner

VERSUS

The State of Rajasthan.

Through: Department of Home,

Secretariat, Jaipur, Rajasthan.

Prosecutor

Respondent

AND IN THE MATTER OF: -

PETITION FOR GRANT OF SPECIAL LEAVE TO APPEAL
UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA
AGAINST THE FINAL JUDGEMENT AND ORDER DATED
27.01.2020 PASSED BY HON'BLE HIGH COURT OF
JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR IN S.B.
CRIMINAL MISC. BAIL APPLICATION NO. 136 OF 2020.

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND
HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. The Petitioner prefer this Petition for Special Leave against the impugned final judgment and order dated 27.01.2020 passed by Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Criminal Misc. Bail Application No. 136 of 2020 by which the High Court has dismissed the aforesaid Bail Application filed by the Petitioner.

2. QUESTIONS OF LAW:

- I. Whether facts and circumstances of the present case do not lead to an irresistible conclusion that the petitioner has been framed in a false and concocted case?
 - II. Whether the petitioner has been framed with an ulterior motive and malafide intention to prolong his custody in jail who has otherwise been acquitted in the cases [Except one case in which charge-sheet has not filed for last more than 12 years] in which he was arrested 12 years before and since then he has been in jail?
 - III. Whether the both Courts below have not taken into consideration that the FIR was initially registered under section 332 of IPC and after a period of six month it was converted under Sec. 333 of IPC only to complicate the case the petitioner for enlargement of bail?
 - IV. Whether the courts below ought not to have considered that incident occurred inside jail premises and the complainant received only one simple swelling injury on his left hand whereas the petitioner got eleven injuries which were far more serious in nature and all were suturing wounds?
 - V. Whether FIR in question is not a deterrent for those prisoners who appeal for their basic and fundamental right from higher
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authority after being aggrieved from the arbitrariness and whimsical attitude of jail authorities?

- VI. Whether the Courts below ought to have appreciated that bail is the rule and committal to jail an exception. The refusal of bail is a restriction on the personal liberty of an individual guaranteed under Article 21 of the Constitution?
- VII. Whether the Courts below ought to have appreciated that the petitioner is entitled to the precious right guaranteed under Art. 21 and he shall not be deprived of his life or personal liberty except according to the procedure established by law?

3. **DECLARATION IN TERMS OF RULE 2(1)(2):**

The petitioner state that no other petition seeking leave to appeal has been filed by the petitioner against the final Judgment and order dated 27.01.2020 passed by Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Criminal Misc. Bail Application No. 136 of 2020.

4. **DECLARATION IN TERMS OF RULE 2(4):**

The Annexures P-1 to P-7 filed along with the Special Leave Petition are true / typed / translated / photo copies of the pleadings / documents which formed part of the record of the case in the Courts below against whose order the leave to appeal is sought for in this Petition.

5. **GROUND**S

The Petitioner respectfully submits that the final Judgment and Order dated 27.01.2020 passed by Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Criminal Misc. Bail Application No. 136 of 2020 is liable to be set aside for the following among other grounds;

- A. **BECAUSE** the trial court as well as Hon'ble High Court have failed to appreciate that the petitioner has been framed with an ulterior motive and malafide intention to prolong his custody in jail who has otherwise been acquitted in the cases (Except one case of which trial was separated) in which he was arrested 12 years before and since then he has been in jail.
- B. **BECAUSE** both Courts below have failed in appreciating role of the petitioner as alleged by the prosecution and also the medical reports of the injuries received by the complainant and also the accused petitioner. The allegation leveled against the petitioner is that when petitioner were returning from his Court's hearing alongwith other co-accused, seeing the petitioner the prisoners started beating their heads on trees and wall of the Jail which does not seem to be sound and believable.
- C. **BECAUSE** both Courts have failed to appreciate that implication of the petitioner and six other accused persons in this case
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tantamount to suppression of the voice of the prisoners at large for their basic and fundamental demands and deter them for the future. Prior to the incident, on 14.03.2019 the Petitioner along with the other prisoner of Central Jail, Jaipur being aggrieved from the arbitrariness and whimsical conduct and discrimination of the Jail Authorities sent a letter-petition to this Hon'ble Court, High Court of Rajasthan, Bench Jaipur, and Human right Commission that they (petitioner and other prisoners) are being subjected to inhuman treatment as they are kept in isolation for full day and night, this petition came to be received in the Supreme Court vide Diary No. 14431/SCT/PIL/2019 whereupon Supreme Court was pleased to seek the report of I.G. and sent petition to the concerned authority for necessary action.

- D. **BECAUSE** both Courts below ought to have appreciated that one day prior to the incident, on 29.03.2019 the petitioner had moved an application before the Court Ld. Trial Court when he appeared on his date of hearing praying that a complainant box be installed and a visit of judicial officer be also made for addressing and observing the grievance of the prisoner of Ward No. 10 of Jail.
- E. **BECAUSE** both Ld. Courts below ought to have appreciated submission in defense while considering the bail of the petitioner that on 30.03.2019 when petitioner returned from the Court

attendance, in the Jail, he and his co-accused were taken to corner of Jail and was beaten brutally by which he got 11 serious injuries which was treated by giving the several stitches. It is pertinent to mention here even medical treatment was not provided. After this incident first time after four day medical treatment was provided to him that too on the direction of Ld. CJM. By that time petitioner kept on suffering from these injuries.

- F. **BECAUSE** the impugned FIR was lodged against the petitioner for causing the simple bruise on the left hand of complainant, on the contrary, for causing the 11 injuries on the heads of the petitioner, yet no action has been taken against those delinquent officials of the Jail. The petitioner was made accused in this case after five months whereas he was available since he was in the same Jail.
- G. **BECAUSE** both Courts below ought to have appreciated while considering the bail of petitioner that "*bail is the rule and committal to jail an exception*". It has also been observed that refusal of bail is a restriction on the personal liberty of an individual guaranteed under Article 21 of the Constitution.
- H. **BECAUSE** both Courts below ought to have taken into consideration that in 2008 the petitioner was arrested in
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connections with eight FIRs registered separately on the same transaction of facts and the allegation against the petitioner is only that he sent an E-mail to the Media Channels about the incident of bomb blast in Jaipur. The petitioner has been acquitted in eight cases but in one case the charge-sheet has not been filed till date in last 12 years in which the allegation is identical and same as that of eight cases in which the petitioner has been acquitted.

- I. *BECAUSE* the Hon'ble High Court has not properly appreciated the facts and settled position of law resulting into miscarriage of justice.
- J. *BECAUSE* the impugned order is unsustainable and contrary to the well settled principles of law.
- K. *BECAUSE* the judgment and order under challenge is otherwise bad in law, and deserves to be set aside by this Hon'ble Court.

6. **GROUND FOR INTERIM RELIEF:-**

- i) *BECAUSE* it is respectfully submitted that the petitioner has 3 school going kids and a young wife who are completely dependent on the petitioner. Due to the confinement of petitioner in jail, the studies and upbringing of the kids are being affected adversely.

- ii) **BECAUSE** the petitioner has been languishing in jail since about 12 years. The petitioner has been framed in this case with an ulterior motive and malafide intention to prolong his custody in jail who has otherwise been acquitted in the cases [Except one case in which charge-sheet has not filed for last more than 12 years] in which he was arrested 12 years before and since then he has been in jail.
 - iii) **BECAUSE** if the Hon'ble grants indulgence of granting bail to the petitioner, he undertakes not to misuse the privilege of bail. The petitioner is ready to abide all the terms and conditions imposed by this Hon'ble Court.
 - iv) **BECAUSE** the petitioner has prima facie a good case on merits. The balance of convenience also lies in favor of the petitioner. It is respectfully submitted that if the interim bail as prayed for is not granted the petitioner would suffer irreparable loss and injury.
 - v) **BECAUSE** the impugned order of the High Court is ex-facie erroneous and is contrary to well settled principles of law.
 - vi) **BECAUSE** the petitioner has a good case on merits and in all likelihood will succeed. The balance of convenience is entirely in favour of the petitioner.
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vii) *BECAUSE* if the interim order as prayed for is granted, the respondents would not suffer any loss. It is, therefore, submitted that if the interim relief as prayed for is not granted the legitimate rights of the petitioner would be seriously jeopardized.

7. **MAIN PRAYER**

It is most respectfully prayed that this Hon'ble Court may graciously be pleased to –

- (i) Grant special leave to appeal against the final impugned judgment and order dated 27.01.2020 passed by Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Criminal Misc. Bail Application No. 136 of 2020 and/or
- (ii) Pass any other and/or further order(s) as may be deemed fit and proper in the facts and circumstances of the case.

8. **INTERIM RELIEF**

- (i) Grant ex-parte ad-interim bail to the petitioner during the pendency of present Special Leave Petition in Session Case No. 13 /2019, arising out of case crime No. 70/2019, P.S. Lal Kothi, Jaipur pending before Additional District & Session Judge, No. 15, Jaipur Metropolitan, Jaipur subject to furnishing of sureties to the satisfaction of trial Court and/ or

(ii) Pass any other and/or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER AS
IN DUTY BOUND SHALL EVERY PRAY.**

Drawn by:

Filed by:

[Mr. Muzahid Ahmad]

Advocate Supreme Court

DRAWN ON: 14.06.2020

(Md. IRSHAD HANIF)

Filed on: 16.06.2020

ADVOCATE FOR THE PETITIONER