

(2023) 17 Supreme Court Cases 446 : 2022 SCC OnLine SC 697

In the Supreme Court of India

(BEFORE SANJAY KISHAN KAUL AND M.M. SUNDRESH, JJ.)

SAUDAN SINGH . . Appellant;

Versus

STATE OF UTTAR PRADESH . . Respondent.

Criminal Appeal No. 308 of 2022⁺, decided on February 25, 2022

A. Criminal Procedure Code, 1973 — Ss. 439 and 389 — Bail — Custody for more than 8, 10, 11, 12, 13 and 14 yrs in certain appeals and these appeals being not decided yet — Same taken as factors for granting bail with conditions to be imposed by the trial court with further direction that the appellants will report to the local police station on the first Monday of every month in the forenoon

B. Criminal Procedure Code, 1973 — Ss. 439 and 389 — Bail — Custody of almost 14 yrs — Held, not material and Supreme Court declined to interfere in the petition, when the hearing found concluded and judgment found reserved before the High Court

(Para 45)

C. Criminal Procedure Code, 1973 — Ss. 439 and 389 — Bail — Consideration of application, when the court is ready to hear the appeal — Held, normally if the court is ready to hear the appeal, the bail application should not be considered, as counsel cannot get away with unpreparedness to argue the appeal and claim bail — However, in cases where a person has already served out 14 yrs of actual sentence, a different norm comes into place requiring the case to be considered thoroughly under the U.P. Prisoners Release on Probation Rules, 1938 — Thus to deny bail to such a person for the fault of the counsel who does not argue, the accused having nothing to gain, would be really a failure of justice

— Appellant found in custody for 17 yrs — Material indicated that matter was listed for bail and on the counsel being called upon to argue the appeal, since he was not prepared, the application was rejected — Thereafter, the appeal listed on four occasions for hearing but same not taken up though the counsel was ready — Resultantly, considering said legal position, bail granted on terms and conditions to the satisfaction of the trial court with further direction that the appellant will report to the local police station on the first Monday of every month in the forenoon — Prisons, Prisoners and Probation of Offenders — U.P. Prisoners Release on Probation Rules, 1938

(Paras 50 to 52)

D. Criminal Procedure Code, 1973 — S. 439 — Bail and consideration of cases under U.P. Prisoners Release on Probation Rules, 1938 — Directions issued for adopting practice by the Allahabad High Court in cases where the convicts completed 14 yrs of sentence and when they served out more than 10 yrs of sentence — Prisons, Prisoners and Probation of Offenders — U.P. Prisoners Release on Probation Rules, 1938



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Held :

For anybody who has completed 14 years of sentence, the case has to be put before the Board to be examined as per the norms. It is not appropriate that those cases lie in the High Court with sentences much beyond 14 years being served without even being examined on the question of their release under the Policy.

(Para 4)

It is possible that in some of these cases, once the accused is released, the person may not at all be interested in prosecuting the appeal. There may be cases where for whatever reason the advocate may not be present as has been set out in the report of the High Court but if they have already completed 14 years of actual sentence, the State itself should take an appropriate stand and the Judge can himself pass appropriate orders to at least examine those cases for release and the absence of the advocate cannot come in the way in such a scenario.

(Para 8)

The second category of cases can be one where the person has served out more than 10 years of sentence. In these cases also at one go bail can be granted unless there are any extenuating circumstances against him.

(Para 8)

The Supreme Court is quite hopeful that the High Court will adopt the aforesaid practice and thus prevent the Supreme Court to be troubled with such matters.

(Para 9)

Saudan Singh v. State of U.P., 2021 SCC OnLine SC 3259; *Teerath v. State of U.P.*, 2016 SCC OnLine All 4154; *Manoj Seth v. State of U.P.*, 2019 SCC OnLine All 7053; *Mohakam Singh v. State of U.P.*, 2019 SCC OnLine All 7055; *Subhash v. State of U.P.*, 2017 SCC OnLine All 3743; *Inder v. State of U.P.*, 2020 SCC OnLine All 1875; *Laxman v. State of U.P.*, 2016 SCC OnLine All 4155; *Sachin Sharma v. State of U.P.*, 2012 SCC OnLine All 4581; *Raju v. State of U.P.*, 2018 SCC OnLine All 6300; *Sohanpal v. State of U.P.*, 2019 SCC OnLine All 7051; *Ahmad Noor v. State of U.P.*, 2017 SCC OnLine All 3742; *Sanjay v. State of U.P.*, 2020 SCC OnLine All 1874; *Virendra Singh v. State of U.P.*, 2011 SCC OnLine All 2870; *Shyamvir Singh Jaat v. State of U.P.*, 2013 SCC OnLine All 14676; *Ashok*

v. State of U.P., 2012 SCC OnLine All 4582; *Genda Lal v. State of U.P.*, 2020 SCC OnLine All 1877; *Ravi v. State of U.P.*, 2019 SCC OnLine All 7052; *Gurmeet v. State of U.P.*, 2019 SCC OnLine All 7054; *Kaluwa v. State of U.P.*, 2020 SCC OnLine All 1876; *Arjun Singh v. State of U.P.*, 2013 SCC OnLine All 14677; *Ram Sujan v. State of U.P.*, 2021 SCC OnLine All 1034, considered

SK-D/69977/SR

Advocates who appeared in this case:

Ravi Prakash Mehrotra, Senior Advocate [Indresh Upadhyay, Akhilesh Yadav, Sorav Singh, Mohammad Arif, Dhruv Chawla, Ms Pankhuri Gupta, Mayank Kshirsagar, Brijesh Upadhyay, Tushar Singh (Advocate-on-Record), Pardeep Gupta, Ms Mansi Gupta, Parinav Gupta, Ms Nandani Gupta, Ms Mamta Sharma, Dr (Ms) Vipin Gupta (Advocate-on-Record), Anubhav, Yashwant Singh Yadav, Ms Preeti Yadav, Vijay Kumar, Ravi Karhana, Rajesh Kumar, Amit Kumar, Rameshwar Prasad Goyal (Advocate-on-Record), Nagendra Singh, Dr Sanjay Gupta, Ashish Pandey and Ronak Karanpuria (Advocate-on-Record), Advocates], for the Appellant;

Ms Garima Prashad, Additional Advocate General [Sarvesh Singh Baghel (Advocate-on-Record), Srinivas Vishven, Ajay Vikram Singh (Advocate-on-Record), Rohit Pandey, Shantanu Singh, Ms Priyanka Singh, Chandra Shekhar, Ms Neelakshi Bhaskar, Vishnu Shankar Jain (Advocate-on-Record), Dhawal Uniyal, Ms Marbiang N. Khongwir, Shashank Shekhar Singh (Advocate-on-Record), Manish Shanker Srivastava, Ms Kalpana, Ms Pallavi Baghel, Abhishek Kr. Singh (Advocate-on-



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Record), Nikhil Goel, Ms Naveen Goel, Vinay Mathew, Kartik Kaushal, Aditya Koshy Roy, Ms Sweta Rani (Advocate-on-Record), Arun Adlakha, Naman Gupta, Prakash Sharma and Dharmendra Kr. Sinha (Advocate-on-Record), Advocates], for the Respondent.

Chronological list of cases cited

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17. 2013 SCC OnLine All 14677, <i>Arjun Singh v. State of U.P.</i>	453d-e
18. 2013 SCC OnLine All 14676, <i>Shyamvir Singh Jaat v. State of U.P.</i>	452b-c
19. 2012 SCC OnLine All 4582, <i>Ashok v. State of U.P.</i>	452d
20. 2012 SCC OnLine All 4581, <i>Sachin Sharma v. State of U.P.</i>	451a
21. 2011 SCC OnLine All 2870, <i>Virendra Singh v. State of U.P.</i>	452a

ORDER

1. Leave granted. The appellant has been in custody for around 8 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

2. In order to find a holistic solution to the problem of hearing of appeal and grant of bail in criminal matters in the Allahabad High Court, in terms of our order dated 5-10-2021¹, we were not wanting to detain the matters qua bail. Thus, we directed the bail matters to be placed before the High Court and the Registry to register a suo motu proceeding and place them before the Court on 16-11-2021. We note with some surprise and consternation that despite the said order, as per the office report, while the suo motu proceedings have been so registered, they were not listed on 16-11-2021 nor on any date thereafter.

3. We have a report of the High Court of Allahabad which seeks to suggest that the 18 matters remitted to the High Court for consideration of bail were listed on 15-11-2021, 16-11-2021 and 17-11-2021 and that appearances were not put in on behalf of the appellants despite the matters being listed in the roster Bench and none appeared to press the matters for being taken up on board. The affidavit is dated 15-11-2021 and the learned counsel for the High

Court seeks to file an updated report as he states that some matters have been dealt with while in other matters though listed on numerous occasions, none appeared for the accused.

4. We have also emphasised to the learned counsel for the State that in reference to our observation on the last date about consideration of cases under the Uttar Pradesh Prisoners Release on Probation Rules, 1938, there should be better coordination between the States and the Registry of the High Court. Thus, for anybody who has completed 14 years of sentence, the case has to be put before the Board to be examined as per the norms. It is not appropriate that those cases lie in the High Court with sentences much beyond 14 years being served without even being examined on the question of their release under the Policy.

5. We thus call upon the High Court and the State Government to prepare a list of such of the cases where the accused have already served out 14 years of sentence and for one reason or the other, the appeal has not been heard (even if it be fault of the lawyer) and those cases should be put before the Board. It is also possible that in some of these cases, once the accused is released, the person may not at all be interested in prosecuting the appeal.

6. There may be cases where for whatever reason the advocate may not be present as has been set out in the report of the High Court but if they have already completed 14 years of actual sentence, the State itself should take an appropriate stand and the learned Judge can himself pass appropriate orders to at least examine those cases for release and the absence of the advocate cannot come in the way in such a scenario.

7. We have put to the learned AAG and the learned counsel for the High Court that a list should be prepared of all cases where the person has served out a sentence of 14 years, is not a repeat offender, and in any case if in these cases at one go bail can be granted and cases remitted for examination under the Uttar Pradesh Prisoners Release on Probation Rules, 1938. In all these cases, there is a high possibility that if these people are released, they may not be even interested in prosecuting their appeals.

8. The second category of cases can be one where the person has served out more than 10 years of sentence. In these cases also at one go bail can be granted unless there are any extenuating circumstances against him.

9. We are quite hopeful that the High Court will adopt the aforesaid practice and thus prevent the Supreme Court to be troubled with such matters.

10. The criminal appeal stands disposed of with the aforesaid observation.

Criminal Appeal No. 309 of 2022 [@ SLP (Crl.) No. 4635 of 2021²]

11. Leave granted. The appellant has been in custody for more than 10 years and the appeal has not been decided yet. The appellant is granted bail on



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terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

12. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 310 of 2022 [@ SLP (Crl.) No. 4634 of 2021³]

13. Leave granted. The appellant has been in custody for around 10 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

14. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 311 of 2022 [@ SLP (Crl.) No. 4637 of 2021⁴]

15. Leave granted. The appellants have been in custody for around 10 years and the appeal has not been decided yet. The appellants are granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellants will report to the local police station on the first Monday of every month in the forenoon.

16. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 312 of 2022 [@ SLP (Crl.) No. 4636 of 2021⁵]

17. Leave granted. The appellant since stands released by the State Government under the Uttar Pradesh Prisoners Release on Probation Rules, 1938 on completion of 14 years of sentence.

18. Criminal appeal stands disposed of as infructuous.

Criminal Appeal No. 313 of 2022 [@ SLP (Crl.) No. 4213 of 2021⁶]

19. Leave granted. The appellant has been in custody for more than 11 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial

court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

20. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 314 of 2022 [@ SLP (Crl.) No. 4638 of 2021⁷]

21. Leave granted. The appellant has been in custody for more than 14 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other



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conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

22. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 315 of 2022 [@ SLP (Crl.) No. 4643 of 2021⁸]

23. Leave granted. The appellant has been in custody for more than 13 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

24. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 316 of 2022 [@ SLP (Crl.) No. 4642 of 2021⁹]

25. Leave granted. The appellant has been in custody for more than 13 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

26. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 317 of 2022 [@ SLP (Crl.) No. 4849 of 2021¹⁰]

27. Leave granted. The appellant has been in custody for around 10 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

28. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 318 of 2022 [@ SLP (Crl.) No. 4641 of 2021¹¹]

29. Leave granted. The appellants have been in custody for more than 10 years and the appeal has not been decided yet. The appellants are granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellants will report to the local police station on the first Monday of every month in the forenoon.

30. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 319 of 2022 [@ SLP (Crl.) No. 4396 of 2021¹²]

31. Leave granted. The appellant has been in custody for more than 14 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other



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conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

32. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 320 of 2022 [@ SLP (Crl.) No. 4847 of 2021¹³]

33. Leave granted. The appellant has been in custody for around 12 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

34. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 334 of 2022 [@ SLP (Crl.) No. 4844 of 2021¹⁴]

35. Leave granted. The appellant has been in custody for around 10 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

36. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 336 of 2022 [@ SLP (Crl.) No. 4848 of 2021¹⁵]

37. Delay condoned. Leave granted. The appellant has been in custody for around 11 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction

of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

38. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 335 of 2022 [@ SLP (Crl.) No. 5472 of 2021¹⁶]

39. Leave granted. The appellant has been in custody for around 11 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

40. The criminal appeal stands allowed in the aforesaid terms.



Criminal Appeal No. 321 of 2022 [@ SLP (Crl.) No. 6928 of 2021¹⁷]

41. Leave granted. The appellant has been in custody for around 14 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

42. The criminal appeal stands allowed in the aforesaid terms.

Criminal Appeal No. 322 of 2022 [@ SLP (Crl.) No. 4639 of 2021¹⁸]

43. Leave granted. The appellant has been in custody for more than 12 years and the appeal has not been decided yet. The appellant is granted bail on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

44. The criminal appeal stands allowed in the aforesaid terms.

[@ SLP (Crl.) No. 4332 of 2021¹⁹]

45. Though the custody is of almost 14 years, we are informed that the hearing is concluded and judgment is reserved. In view thereof, we would not like to interfere in the present petition.

46. The special leave petition stands disposed of accordingly.

Criminal Appeal No. 323 of 2022 [@ SLP (Crl.) No. 4640 of 2021²⁰]

47. Leave granted. The learned counsel for the appellant submits

that the appellant has been released by the State Government.

48. The criminal appeal stands disposed of.

Criminal Appeal No. 324 of 2022 [@ SLP (Crl.) No. 6449 of 2021²¹]

49. Issue notice. The learned counsel for the State accepts notice.

50. Leave granted. The appellant is stated to be in custody for 17 years. It is stated that the matter was listed for bail and on the counsel being called upon to argue the appeal, since he was not prepared, the application was rejected. Thereafter, the appeal was listed on four occasions for hearing but was not taken up though the counsel was ready.

51. In our view, there is apparently a misconception that if the Court is ready to hear the appeal, the bail application should not be considered in all circumstances. This would normally be true as the counsel cannot get away with unpreparedness to argue the appeal and claim bail. The caveat to this would be in cases where a person has already served out 14 years of actual sentence



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as in that case, a different norm comes into place requiring the case to be considered thoroughly under the Uttar Pradesh Prisoners Release on Probation Rules, 1938. Thus to deny even bail to such a person for the fault of the counsel who does not argue, the accused having nothing to gain, would be really a parity of (*sic* parody) justice.

52. We are thus of the view that this is a fit case to grant bail to the accused on terms and conditions to the satisfaction of the trial court. Apart from any other conditions to be imposed by the trial court, the appellant will report to the local police station on the first Monday of every month in the forenoon.

53. The criminal appeal stands allowed in the aforesaid terms.

54. A copy of this order to be placed before the Hon'ble the Chief Justice of Allahabad High Court.

55. The order-sheets of this Court including today's order-sheet be placed in the suo motu proceedings.

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[†] Arising out of SLP (Crl.) No. 4633 of 2021. Arising from the Judgment and Order in *Bheema v. State of U.P.*, 2018 SCC OnLine All 6301 (Allahabad High Court, Criminal Appeal No. 3542 of 2017, dt. 20-11-2018)

¹ *Saudan Singh v. State of U.P.*, 2021 SCC OnLine SC 3259

² Arising from the Judgment in *Teerath v. State of U.P.*, 2016 SCC OnLine All 4154

³ Arising from the Judgment in *Manoj Seth v. State of U.P.*, 2019 SCC OnLine All 7053

⁴ Arising from the Judgment in *Mohakam Singh v. State of U.P.*, 2019 SCC OnLine All 7055

⁵ Arising from the Judgment in *Subhash v. State of U.P.*, 2017 SCC OnLine All 3743

⁶ Arising from the Judgment in *Inder v. State of U.P.*, 2020 SCC OnLine All 1875

⁷ Arising from the Judgment in *Laxman v. State of U.P.*, 2016 SCC OnLine All 4155

⁸ Arising from the Judgment in *Sachin Sharma v. State of U.P.*, 2012 SCC OnLine All 4581

⁹ Arising from the Judgment in *Raju v. State of U.P.*, 2018 SCC OnLine All 6300

¹⁰ Arising from the Judgment in *Sohanpal v. State of U.P.*, 2019 SCC OnLine All 7051

¹¹ Arising from the Judgment in *Ahmad Noor v. State of U.P.*, 2017 SCC OnLine All 3742

¹² Arising from the Judgment in *Sanjay v. State of U.P.*, 2020 SCC OnLine All 1874

¹³ Arising from the Judgment in *Virendra Singh v. State of U.P.*, 2011 SCC OnLine All 2870

¹⁴ Arising from the Judgment in *Shyamvir Singh Jaat v. State of U.P.*, 2013 SCC OnLine All 14676

¹⁵ Arising from the Judgment in *Ashok v. State of U.P.*, 2012 SCC OnLine All 4582

¹⁶ Arising from the Judgment in *Genda Lal v. State of U.P.*, 2020 SCC OnLine All 1877

¹⁷ Arising from the Judgment in *Ravi v. State of U.P.*, 2019 SCC OnLine All 7052

¹⁸ Arising from the Judgment in *Gurmeet v. State of U.P.*, 2019 SCC OnLine All 7054

¹⁹ Arising from the Judgment in *Kaluwa v. State of U.P.*, 2020 SCC OnLine All 1876

²⁰ Arising from the Judgment in *Arjun Singh v. State of U.P.*, 2013 SCC OnLine All 14677

²¹ Arising from the Judgment in *Ram Sujan v. State of U.P.*, 2021 SCC OnLine All 1034

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