

VERDICTUM.IN

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.3767 OF 2024
(Arising out of SLP(Criminal) No.3440/2023)

BASUDEV MANDAL

APPELLANT

VERSUS

MOHAMMED ALI & ORS.

RESPONDENTS

WITH

CRIMINAL APPEAL NO.3768 OF 2024
(Arising out of SLP(Criminal) No.3620/2023)

O R D E R

1. Leave granted.
2. The challenge is to the order dated 17.08.2022 passed by a Division Bench of the High Court of Kerala at Ernakulam, whereby the sentence of life imprisonment awarded to respondent no.1 has been suspended, and he has consequently been released on bail.
3. Shyamal Mandal (deceased), a 20-year old, final year student of B.Tech. (Applied Electronics) (academic session 2002-2005) studying in the College of Engineering at Thiruvanthapuram, was residing in the college hostel. He went missing on 13.10.2005. A missing report was registered on 15.10.2005. The appellant-father of the deceased statedly received two calls on 16.10.2015 demanding ransom and asking him to deliver the money in Chennai. Thereafter, an unidentified male body was found on 23.10.2005 in an isolated place near Vellam (under

VERDICTUM.IN

Thiruvallam Police Station). The dead body was identified as that of Shyamal Mandal. The postmortem report revealed that the death was due to incised injury in his neck.

4. Respondent no.1, on 24.10.2005, allegedly withdrew Rs.500/- using an ATM card, which would have been in the possession of the deceased. Respondent no.1 was arrested on 12.11.2005. He was released on bail after three months on 17.02.2006.

5. The trial of the case was transferred to CBI on 10.12.2008, followed by registration of a fresh FIR by the CBI. The matter was investigated by CBI and a report under Section 173 of Code of Criminal Procedure, 1973 (in short, the "Cr.P.C.") was filed before the Chief Judicial Magistrate, Ernakulam on 28.10.2010.

6. The learned Special Judge, CBI held respondent no.1 guilty under Section 302, 364-A, 379, and 120-B of the Indian Penal Code, 1860 and sentenced him to life imprisonment vide judgment dated 13.04.2022.

7. The aggrieved respondent no.1 filed Criminal Appeal No.462/2022 before the High Court of Kerala, in which he moved an application for suspension of sentence and grant of bail under Section 389 of Cr.P.C. The said application has been allowed by the High Court vide impugned order dated 17.08.2022, giving rise to these proceedings.

8. We have heard learned senior counsel for the parties at a considerable length and perused the record.

VERDICTUM.IN

9. Firstly, it seems to us that while passing the impugned order, the High Court has made certain observations which are likely to have an impact on the final outcome of the appeal.

10. Secondly, the family of the deceased, namely, his appellant-father was not heard by the High Court while suspending the sentence.

11. Thirdly, it seems to us that a brief reasoned order delineating the parameters within which the prayer for suspension of sentence is required to be considered, would be more appropriate, as such an order, whether or not suspending the sentence, will cause prejudice to none.

12. We, therefore, without expressing any opinion on merits of the case, deem it appropriate to set aside the impugned order dated 17.08.2022, with a request to the High Court to pass an appropriate order afresh, after hearing all the parties, including the appellant-father of the deceased.

13. All the contentions raised by the parties are kept open with liberty to raise the same before the High Court.

14. Since we have set aside the order suspending the sentence of respondent no.1, it is directed that he shall remain on interim bail till the High Court passes an appropriate order on his application for suspension of

VERDICTUM.IN

sentence.

15. The parties are directed to appear before the High Court on 30.09.2024.

16. While respondent no.1 will be at liberty to file a supplementary affidavit, if so required, in support of his application for suspension of sentence, the appellants shall also be at liberty to file their reply and/or any other material which they find relevant in the context of respondent no.1's prayer for suspension of sentence.

17. The appeals are disposed of in the above terms.

.....J.
(SURYA KANT)

.....J.
(UJJAL BHUYAN)

New Delhi;
September 10, 2024

VERDICTUM.IN

ITEM NO.10

COURT NO.4

SECTION II-B

S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).3440/2023

(Arising out of impugned final judgment and order dated 17-08-2022 in CRMA No.02/2022 passed by the High Court Of Kerala At Ernakulam)

BASUDEV MANDAL

Petitioner(s)

VERSUS

MOHAMMED ALI & ORS.

Respondent(s)

WITH

SLP(Crl) No.3620/2023 (II-B)

(FOR ADMISSION and I.R. and IA No.43813/2023-CONDONATION OF DELAY IN FILING and IA No.43816/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 10-09-2024 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) Mr. K Parameshwar, Sr. Adv.
Mr. Ayush Anand, Adv.
Mr. Shubhendu Anand, Adv.
Mr. Monu Kumar, Adv.
Ms. Kanti, Adv.
Ms. Raji Gururaj, Adv.
Mr. Siddhartha Sinha, AOR

Ms. Sonia Mathur, Sr. Adv.
Mr. Mukesh Kumar Maroria, AOR
Mr. Shlok Chandra, Adv.
Mr. Gautam Bhardwaj, Adv.
Mr. Pratyush Srivastava, Adv.
Mr. Santosh Kumar, Adv.
Mr. Rajan Kumar Chourasia, Adv.

For Respondent(s) Mr. Siddharth Dave, Sr. Adv.
Mr. Rishi Kapoor, Adv.
Mr. Ankur Gogia, Adv.
Mr. Rahul Kumar, Adv.
Ms. Kajal Bhatia, Adv.
Mr. Nakul Chengappa, Adv.
Mr. Praveen Pathak, Adv.
Mr. Chand Qureshi, AOR

VERDICTUM.IN

**Mr. Nishe Rajen Shonker, AOR
Mrs. Anu K Joy, Adv.
Mr. Alim Anvar, Adv.**

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

- 1. Leave granted.**
- 2. The appeals are disposed of in terms of the signed order.**
- 3. All pending applications, if any, also stand disposed of.**

**(ARJUN BISHT)
ASTT. REGISTRAR-cum-PS**

**(PREETHI T.C.)
ASSISTANT REGISTRAR
(signed order is placed on the file)**