

VERDICTUM.IN

ITEM NO.28

COURT NO.11

SECTION X

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

Writ Petition(s)(Criminal) No(s). 245/2024

VIJAY BHUSHAN GAUTAM

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

**(FOR ADMISSION and IA No.129886/2024-EXEMPTION FROM FILING O.T.
IA No.129885/2024-PERMISSION TO APPEAR AND ARGUE IN PERSON)**

Date : 22-07-2024 This petition was called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH**

For Petitioner(s) Petitioner-in-Person

For Respondent(s)

UPON hearing the petitioner-in-person the Court made the following

O R D E R

- 1. Permission is granted to the petitioner to appear and argue in person.**
- 2. The petitioner has invoked the jurisdiction of this Court under Article 32 of the Constitution of India seeking the following relief:**

"1. To grant the benefit of anticipatory bail to the petitioner in respect of complaint No.6264/21 (original 434/07), titled Hansraj Vs. Vijay Bhushan Gautam, to the satisfaction of Ld. ACJ-IV (Sr. Div.), Ghaziabad.

2. It is requested & prayed that after taking into consideration of age & other vital factors, the petitioner may kindly be granted the benefit of Anticipatory Bail in respect of complaint no.6264/21 (original 434/07).

3. Any & such further orders as this Hon'ble Court may deem fit & proper in the facts & circumstances of the case."

3. Having regard to the fact that the remedy of securing bail in anticipation of arrest is available to the petitioner under section 438 of the Code of Criminal Procedure, 1973 (Cr. PC) which he has not availed, we are not inclined to entertain this writ petition in exercise of jurisdiction conferred on us by Article 32 of the Constitution.

4. However, our attention has been drawn to a revisional order of the Sessions Judge, Ghaziabad dated 09th April, 2024, whereby a criminal revisional petition filed by the petitioner [questioning the order dated 12th February, 2024 passed by the Additional Chief Judicial Magistrate, Court No.4, Ghaziabad (ACJM) issuing non-bailable warrant against the petitioner and also initiating process under Section 82 of the Cr. PC] was rejected.

5. Having read the order dated 09th April, 2024, we find that the petitioner is an accused in a private complaint. He questioned proceedings initiated by the jurisdictional magistrate by filing a writ petition before the High Court in the year 2009, whereupon the proceedings were stayed. Such order of stay stood automatically vacated in view of the decision of this Court in *Asian Resurfacing of Road Agency Pvt. Ltd. Vs. Central Bureau of Investigation*¹. The petitioner was unaware of the fact that the stay order stood vacated which resulted in the order of the ACJM, since affirmed by the Sessions Judge, noted above.

6. Pertinently, the decision in *Asian Resurfacing of Road Agency*

1 (2018) 16 SCC 299

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Pvt. Ltd. (supra) has since been overruled by a Constitution Bench of this Court in its decision in *High Court Bar Association, Allahabad Vs. State of U.P. & Ors.*²

7. A Bench of this Court upon noticing the overruling of *Asian Resurfacing of Road Agency Pvt. Ltd.* (supra), in its order dated 01st March, 2024 in *Pawan Agarwal vs. State of Uttar Pradesh*³, held, *inter alia*, as follows:

“10. The development is, indeed, significant. In our reading, the sequitur of the observations made by the Constitution Bench in *High Court Bar Association, Allahabad* (supra), in the context of this appeal, is that if the trial has not been concluded following an automatic vacation of stay per *Asian Resurfacing* (supra), such automatic vacation of stay would be invalid and stand inoperative. Concededly, in the present case, trial has not been concluded; and having regard to overruling of the decision in *Asian Resurfacing* (supra), the order of stay granted by the High Court on the application under Section 482 of the Cr. P.C., vide order dated 19.08.2011, would revive meaning thereby that, no coercive action can be taken against the appellant till such time his application under Section 482 of the Cr.P.C. is next considered by the High Court. We place on record our inability to be ad idem with learned senior counsel for the respondent - State, and hold to the contrary.

11. In view of the legal position, discussed above, we do not see any reason to decide whether the High Court was justified in its approach of dismissing the application under Section 438, Cr. P.C. on the ground of maintainability. The appeal stands disposed of by holding that the interim order dated 19.08.2011 granted by the High Court has become operative from the date *Asian Resurfacing* (supra) stands overruled and shall govern the parties till such time the High Court, on being approached either by the respondent - State or by the informant, vacates/varies the said order permitting coercive action to be taken against the appellant. We reserve the liberty of the respondent - State, as well as the informant, to approach the High Court for appropriate relief.”

² (2024) 6 SCC 267

³ Criminal Appeal No.1307/2024

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8. There is no reason why the interim order passed by the High Court shall not stand revived, given the fact that the writ petition is still reported to be pending, in view of such overruling.

9. Therefore, it would be expedient for the ends of justice to grant liberty to the petitioner to carry out suitable amendments in the petition to convert it into a special leave petition challenging the order dated 09th April, 2024 of the Sessions Judge, Ghaziabad as well as to include suitable pleadings/prayers therein. Ordered accordingly.

10. Registry is directed to assign a fresh number to the special leave petition, upon its conversion as directed above.

11. Mr. Raghenth Basant, learned senior counsel is present in court. He has graciously accepted our request to assist the petitioner to do the needful in terms of this order. Let the amendments be carried out within a week from date.

12. After the petition is registered as a special leave petition, re-list the same on 12th August, 2024.

13. Until further orders, no coercive action shall be taken against the petitioner.

(RASHMI DHYANI PANT)
COURT MASTER (SH)

(SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)