

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS. 1725-1726 OF 2011
(arising out of SLP (Crl.) Nos. 6734-6735 of 2011
@ CrI.M.P. Nos. 17005-17006 of 2011)

JERMANI YADAV

.....APPELLANT(S)

VERSUS

STATE OF BIHAR

.....RESPONDENT(S)

O R D E R

Delay condoned.

Leave granted.

By the order of the High Court, the appellant has been apparently granted bail. But in reality that is not so, because the High Court put an extraordinary rider that the appellant would come out only after remaining in jail for the same period as another co-accused in the case, namely Bipin Yadav. Consequently, the appellant must remain in jail upto November 24, 2014.

According to the prosecution case, in revenge for the killings of Shambhu Yadav and Jagdev Yadav, the accused, including the present appellant, picked up one Gorakh Yadav (a child aged about 10 years), who happened to be the nephew of one of the accused who killed Shambhu Yadav and Jagdev Yadav. The appellant and the other accused in the case are alleged to have brought the child to the spot where the bodies of their associates and friends Shambhu Yadav and Jagdev Yadav were lying and killed him there by gunshots.

The occurrence took place on December 08, 1999. The appellant was taken in custody 10 years later on November 24, 2009.

.....2/-

While pressing the bail application before the High Court, it appears to have been submitted that another co-accused in the case Bipin Yadav was released on bail. It may be noted here that Bipin Yadav had surrendered on August 16, 2002 and he was released on bail on March 15, 2007.

The High Court might have rejected the bail application of the appellant on the ground that he was an absconder for 10 years and his case was, therefore, distinguishable from Bipin Yadav; or the High Court might have taken steps for an expeditious conclusion of the appellant's trial. Instead, the High Court adopted rather a strange course and while directing the appellant to be released on bail added the condition that he would be enlarged on bail *'only after he completes life period of custody as co-accused Bipin Yadav'*. As noted above, before being released on bail Bipin Yadav had remained in jail for 4 years 6 months and 28 days. Consequently, the appellant may not be released before November 24, 2014.

We find the order of the High Court difficult to sustain. We, accordingly, set aside the order and direct the High Court to reconsider the appellant's application for bail afresh and to pass appropriate orders in accordance with law.

The criminal appeals are allowed in the aforesaid terms.

.....J
(AFTAB ALAM)

.....J
(R.M. LODHA)

NEW DELHI,
SEPTEMBER 02, 2011.

ITEM NO.28

COURT NO.9

SECTION IIA

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 (Cr1)... 2011

CRLMP.NO(s). 17005-17006

(From the judgement and order 02/07/2010 dated CRLM No. 22328/2010 and order dated 15/09/2010 in CRLM No. 33394/2010 of the HIGH COURT OF PATNA)

JERMANI YADAV

Petitioner(s)

VERSUS

STATE OF BIHAR

Respondent(s)

(With appln(s) for c/delay in filing SLP and office report)

Date: 02/09/2011 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM

HON'BLE MR. JUSTICE R.M. LODHA

For Petitioner(s)

Mr. Kundan Kumar Mishra, Adv.

Mr. Anil Kr. Mishra, Adv.

Mr. Rakesh Malviya, Adv.

For Respondent(s)

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

Delay condoned.

Leave granted.

The criminal appeals are allowed.

(N.S.K. Kamesh)
Court Master

(S.S.R. Krishna)
Court Master

(signed reportable order is placed on the file)