



2026:AHC:67537

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 8312 of 2023

Rinku Singh @ Harveer Singh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Hriday Narayan Pandey, Raj Karan Patel, Ram Sunder Yadav
Counsel for Respondent(s)	: G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This criminal appeal under Section 86 Cr.P.C. has been preferred by the appellant being aggrieved with the order dated 14.7.2023 passed by learned third Additional Sessions Judge/Special Judge (Dacoity Affected Area), Kanpur Dehat (for short 'the learned trial court' hereinafter) in Case Crime No.386 of 2014 (State Vs. Rinku Singh @ Harveer Singh) under Sections 394, 411 I.P.C., Police Station Sikandara, District Kanpur Dehat, whereby the property release application moved by the applicant/appellant was rejected by the learned trial court.

2. Heard Sri Raj Karan Patel, learned counsel for the appellant, Ms. Divya Ojha, learned Additional Government Advocate for the State and perused the record.

3. Learned counsel for the appellant has submitted that in Case Crime No.386 of 2014, the present appellant is one of the accused. The local police has seized the articles from the house of the younger brother of the appellant which house is in the name of Rahul Singh S/o Pratap Singh at Suzuki Agency, Bhikampur, Dayalpur, Police Station Auraiya, District Auraiya, however, the appellant Rinku Singh is the accused in the aforesaid case and he is living in his separate house situated at Kyotra, Madrai, Nagar Panchyat Auraiya, District Auraiya. As a matter of fact, the appellant could not appear before the Court in the aforesaid case and the Court proceeded against him and he was declared absconder and proceedings under Sections 82 and 83 Cr.P.C. were brought into action and his moveable properties were attached by the Court. Subsequently, when the aforesaid orders came into notice of the appellant he himself surrendered before the learned trial Court and was released on bail on 2.2.2023. It is further submitted that the application for release of the attached moveable properties moved by the appellant was

rejected by the court concerned by passing the impugned order. The relevant part of the order impugned is delineated below :-

"इस प्रकार प्रार्थी/अभियुक्त द्वारा उक्त प्रकरण में आरोप पत्र प्रस्तुत किए जाने के उपरान्त उपस्थित रहा तथा परीक्षण के स्तर पर ही अनुपस्थित हो गया, जिस कारण प्रकरण की कार्यवाही विलम्बित रही तथा अभियुक्त की उपस्थिति सुनिश्चित करने हेतु न्यायालय द्वारा अभियुक्त के विरुद्ध अनेकों तिथियों पर गैर जमानतीय अधिपत्र, धारा 82 दं० प्र०सं० एवं धारा 83 दं० प्र०सं० की आदेशिकाएं निर्गत करने के उपरान्त प्रार्थी / अभियुक्त की कुर्की होने के उपरान्त न्यायालय में उपस्थित सुनिश्चित हो सकी है। इस प्रकार न्यायालय में जमानत के परान्त अभियुक्त स्वेच्छया उपस्थित नहीं रहा है तथा न्यायालय द्वारा अनेकों बार अदेशिकाएं निर्गत करने के उपरान्त प्रार्थी/अभियुक्त की उपस्थिति सुनिश्चित हो सकी है तथा धारा 83 दं० प्र०सं० की आदेशिका जारी किए जाने के विनिर्दिष्ट समय पर उपस्थित न होने के कारण प्रार्थी / अभियुक्त का धारा 83 दं० प्र० सं० के अधीन कुर्क किया गया सामान धारा 85 (2) दं० प्र० सं० के अधीन प्राविधानों के प्रकाश में निर्मुक्त किए जाने का कोई आधार नहीं है। प्रार्थना पत्र निरस्त किए जाने योग्य है।"

4. On the basis of the said analogy, the learned trial court rejected the application moved by the appellant for the release of the attached moveable properties.

5. Learned counsel for the appellant further submitted that the aforesaid order passed by the learned trial court is not sustainable under law since the appellant, who had been declared absconder by the Court for the reason of his absconding and the moveable properties were attached, was already surrendered before the learned trial Court and had been taken into judicial custody and subsequently was released on bail, therefore, there was no occasion for the trial court to keep the properties attached to secure his appearance before the Court. After the appearance of the appellant before the Court, there was no justification to keep the properties attached by the Court.

6. In support of his contention, emphasis has been laid down by the learned counsel for the appellant on a decision of Hon'ble Supreme Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat, (2002) 10 SCC 283** and a prayer to set-aside the impugned order has been made.

7. Per contra, learned State Counsel vehemently opposed the prayer of the appellant and there is no justification to release the same pending aforesaid proceedings and further a request has been made for the dismissal of the present appeal.

8. The relevant provisions embodied in the Cr.P.C. have to be perused before proceed further which are extracted as below.

9. Section 82 of the Criminal Procedure Code provides as under :

"82. Proclamation for person absconding. - (i) *If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*

(2).....

(3).....

(4).....

(5)....."

10. Further, Section 83 of the Code of Criminal Procedure provides as under :

"83. Attachment of property of person absconding. - (1) *The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person :*

(2).....

(3) *If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made -(a) by seizure; or (b) by the appointment of a receiver; or -(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or (d) by all or any two of such methods, as the Court thinks fit.*

(4).....

(5).....

(6)....."

11. Further, the provision for the release, sale and restoration of attached property is embodied under Section 85 of the Criminal Procedure Code, which is extracted as below :

"85. Release, sale and restoration of attached property. - (1) *If the proclaimed person appears within the time specified in the proclamation,*

the Court shall make an order releasing the property from the attachment.

(2).....

(3)....."

12. The provision for appeal has been provided under Section 86 of the Cr.P.C. and the contents thereof are given hereinbelow :

"86. Appeal from order rejecting application for restoration of attached property. - Any person referred to in sub-section (3) of section 85, who is aggrieved by any refusal to deliver property or the proceeds of the sale thereof may appeal to the Court to which appeals ordinarily lie from the sentences of first-mentioned Court."

13. The reason for rejection of his release application mentioned by the learned trial court in the impugned order is that the accused has not been voluntarily present in the court after being granted bail and the presence of the applicant/accused has been ensured after the court has issued several orders and due to his absence at the specified time of issuance of the order under Section 83 CrPC, there is no basis for releasing the goods of the applicant/accused which were seized under Section 83 Cr.P.C.

14. From the perusal of the impugned order, this Court finds an admitted fact that the accused-appellant who was declared absconder by the Court and whose property was attached under the Orders of the Court, subsequently himself surrendered before the learned trial Court and sent to jail. There is nothing in the impugned order to show that the absconder was brought / appeared before the Court after the time specified in the proclamation issued by the police was lapsed. The absconder primarily means a person who tries to hide and when with an object to evade the process of law he remains hiding from the place of his residence, he is called an absconder, but at the same time the moment he appears or is brought before the Court and is taken into custody, he is no more an absconder and that is the reason Section 85 of the Code of Criminal Procedure makes a provision that on appearance of a proclaimed person before the Court, the Court shall make an order releasing the property from the attachment. Hence, the appellant who ceased to be an absconder after his appearance before the Court within the ambit of law, was entitled for the release of his property.

15. In view of the aforesaid facts and circumstances of the case, arguments advanced by the learned counsel for the parties and keeping in view the law

laid down by the Hon'ble Apex Court as well as in view of the above discussions, this Court is of the view that the present Appeal is liable to be allowed and the impugned order is liable to be set-aside.

16. Accordingly, the Appeal is allowed and the impugned order dated 14.7.2023 passed by learned trial Court in Case Crime No.386 of 2017 (State Vs. Rinku Singh @ Harvir Singh) under Sections 394, 411 I.P.C., Police Station Sikandara, District Kanpur Dehat, whereby the application for release of property moved by the applicant/appellant was rejected by the said court, is hereby set-aside. The court concerned / appropriate authorities are directed to release the goods/articles of the appellant attached in pursuance of order issued under Section 83 Cr.P.C. forthwith, on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned.

March 31, 2026
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(Mrs. Vani Ranjan Agrawal,J.)