

ITEM NO.19

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s).5315/2022

(Arising out of impugned final judgment and order dated 10-05-2022 in CRMA No. 40580/2021 passed by the High Court of Judicature at Allahabad)

MOHAMMAD AZAM KHAN

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH

Respondent(s)

(FOR ADMISSION and I.R. and IA No.80572/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.80571/2022-EXEMPTION FROM FILING O.T. and IA No.80576/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 27-05-2022 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. Kapil Sibal, Sr. Adv
Mr. Mohd. Nizamuddin Pasha, Adv.
Mr. Lzafeer Ahmad B. F., AOR
Mr. Aditya Samaddar, Adv.
Mr. Ahmad Ibrahim, Adv.

For Respondent(s)

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

1 In paragraph 36 of its impugned order dated 10 May 2022, the High Court opined that bail was being granted to the petitioner on the grounds of age and his medical condition apart from the fact that "in most of the cases in which the prosecution were initiated against him, he has been bailed out". However, *prima facie*, the conditions which have been imposed by the High Court for the grant of bail are disproportionate and have no reasonable nexus to the

conditions which are required to be imposed to secure the presence of the accused and to ensure that the fairness of the trial is not impeded.

- 2 In paragraph 40 of the impugned order, the Single Judge has observed that “the present order in this bail application may sound like a decree of the civil court dealing and deciding the title over the property”. *Prima facie*, the High Court, while imposing conditions for the grant of bail, has exceeded the settled parameters governing the exercise of the jurisdiction under Section 439 of the Code of Criminal Procedure 1973.
- 3 Issue notice, returnable on 14 July 2022.
- 4 Till the next date of listing, the following directions contained in paragraph 39(1) of the impugned order of the High Court shall remain stayed:

- “(i) As mentioned above, the applicant himself has distanced and delinked with the property in dispute though at present lying in the campus of University whose reference is given in paragraphs 8 (vii), 9, 10 and 11 of this judgment, the District Magistrate, Rampur being a representative of Custodian/Administrator of Evacuee/Enemy Property is directed to hold a measurement of the landed property in dispute which is center dispute of this issue admesuring area 13.842 hectares village Singhan Khera, Pargana and Tehsil-Sadar, District Rampur and thereafter raise a boundary wall and barbed wire around it and take the actual physical possession of the property in dispute on behalf of Administrator of Evacuee Property Mumbai latest by 30.6.2022.

In this exercise the the local Revenue authorities, University authorities would fully cooperate and shall not cause any hindrance or obstacle while carrying out aforesaid direction. Since the applicant Mohd. Azam Khan is already in jail for almost two and half years, he shall be released on interim bail during this exercise in aforesaid case crime by furnishing a personal bond of Rs. 1 lac and two sureties of the like amount to the satisfaction of the court concerned. After completion of aforesaid exercise to the satisfaction of the District Magistrate, Rampur and after taking his final nod in the aforesaid drill, then only his interim bail would be converted into regular bail on

the same terms and conditions and on the same bonds as furnished earlier. It is expected that the applicant would also render his desired cooperation in completing this object during his release on interim bail. The Custodian Evacuee Property Mumbai is requested to hand over the property in dispute to some para military forces for their training purposes, as already done in the year 2014.”

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(SAROJ KUMARI GAUR)
COURT MASTER