CASE NO.:
Appeal (crl.) 1312 of 2002
Special Leave Petition (crl.) 1285 of 2002

PETITIONER:
Mansab Ali

RESPONDENT:
Irsan and another

DATE OF JUDGMENT: 13/12/2002

BENCH:
M.B. Shah & D.M. Dharmadhikari.

JUDGMENT:

J U D G M E N T

DHARMADHIKARI, J

Leave to appeal is granted.
The learned counsel appearing for the parties are finally heard on the merits of the appeal.

The complainant has approached this court against a laconic order passed by the learned Single Judge of the High Court of Uttranchal granting amongst several co-accused, bail to accused-respondent herein who is facing trial with others in Crime No.148 of 2001 for offences under Section 302, 307, 323 read with Sections 147,148 and 149 of the Indian Penal Code.

The provisions of Criminal Procedure Code confer discretionary jurisdiction on criminal courts to grant bails to accused pending trials or in appeals against convictions. Since the jurisdiction is discretionary it is required to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In granting or refusing the bail, the courts are required to indicate, may be very briefly, the reasons for grant or refusal of bail. The jurisdiction has not to be exercised in a casual and cavalier fashion as has been done by the learned judge in this case.

Learned counsel appearing for the complainant severely criticizes the order impugned granting bail to the respondent-accused. It is submitted that respondent-Irsan was on bail pending Criminal Appeal No.78 of 1998 filed by him with four co-accused persons. It is during the bail period that he is alleged to have committed the offence of murder of Dr. Ayyub and injured Kayyum and Kalloo. Looking to the seriousness of the offence and nature of allegations, Sessions Judge, Haridwar, rejected the bail application on 31.10.2001.

The learned Judge by his order dated 20.11.2001 granted bail to respondent-Irsan and has not indicated why he considered it fit to grant bail to only one of the accused. It is not apparent from the impugned order that the learned judge has given due consideration to relevant factors like the nature of the accusation, the evidence collected by the

prosecution, the character, behaviour, antecedents and standing of the accused.

We dis-approve the judgment rendered by the High Court. We were also inclined to undertake the exercise of going through the police papers and the evidence so far recorded by the trial court to consider the prayer of complainant for cancellation of bail but we refrain from doing so because learned counsel appearing for respondent accused Irsan informs that the Sessions trial in which the accused was enlarged on bail is proceeding with expedition and major part of evidence has been recorded.

In the aforesaid circumstances, we direct the learned Sessions Judge, conducting the trial of the case to consider the present application of the complainant for cancellation of bail on the basis of the police papers and the evidence so far recorded in the case. We leave it to the judicious discretion of the learned Sessions Judge to continue the bail or cancel the same after hearing the counsel for the prosecution and the accused.

The appeal, thus, stands disposed of.