

**Court No. - 86**

**Case :-** CRIMINAL APPEAL No. - 706 of 2023

**Appellant :-** Imran

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Darwari Lal

**Counsel for Respondent :-** G.A.

**Hon'ble Nalin Kumar Srivastava,J.**

Order on appeal:

1. Admit.
2. Notice on behalf of respondent no. 1 has been accepted by learned A.G.A.
3. Summon the L.C.R. forthwith. Upon receipt of record, office to prepare paper book.
4. List this appeal for hearing in due course.

**Order on Bail Application:**

1. This Criminal appeal under Section 374 (2) of the Criminal Procedure Code has been preferred by the appellant **Imran** against the judgment of conviction dated 16.12.2022 and sentence dated 20.12.2022 passed by Additional District & Sessions Judge, Court No.12, Bareilly in Sessions Trial No.138 of 2016 (State vs. Imran), arising out of case crime No.720 of 2015 under Sections 304, 323, 506 I.P.C., P.S.-Izzatnagar, District-Bareilly whereby the trial Court has convicted the appellant and sentenced him under Section 304 I.P.C. for 10 years simple imprisonment with a fine of Rs.10,000/- in default of payment of fine 4 months additional simple imprisonment, under Section 323 I.P.C. one year simple imprisonment with a fine of Rs.1000/- in default of payment of fine two months additional simple imprisonment; under Section 506 I.P.C. for one year rigorous imprisonment with a fine of Rs.1000/- in default of payment of fine two months additional simple imprisonment and it was ordered that all the sentences of the appellant shall run concurrently.
2. Heard learned Counsel for the appellant-applicant as well as the learned AGA for the State.

3. By means of the bail application, the appellant-applicant seeks suspension of sentence / grant of bail.

4. The prosecution case as reveals from the perusal of record that on 12.11.2015 at about 10:45 a.m., in a sudden provocation, deceased - Pyare Lal (father of the informant) was bitterly assaulted by Imran, Rinku and Salman by belt and *Danda*, who sustained grievous injuries and was taken to the hospital. The report was lodged and after initiation of prosecution, the present applicant was convicted under Section 304, 323 and 506 IPC by the trial court and was sentenced as mentioned herein above.

5. It has been submitted by learned counsel for the appellant-applicant that the appellant is innocent and has falsely been implicated in this case only on account of animosity and the trial court, on the basis of unreliable and insufficient evidence adduced by the prosecution, recorded conviction of the present applicant. It is further submitted that during course of trial, two eye-witnesses, namely, Deepak (PW-1) and Hukma @ Hukum Singh (PW-4) turned hostile and did not support the prosecution version. It is further submitted that there are material contradictions in the testimony of PW-2, the informant and PW-3 Smt.Bela Devi, the alleged eye-witness of this case. It is further submitted that there is no specific role of assault assigned to the present applicant. Two of the named accused persons were declared juvenile and their trial was separated. The medical evidence does not corroborate the prosecution version. It is also submitted that the incident is said to be occurred on 12.11.2015, whereas the death of the deceased is said to be occurred on 17.11.2015, i.e., five days after the occurrence and the cause of death has been found by the doctor as Coma and Septicemic Shock. It is further submitted that the appellant is languishing in jail since 16.12.2022. The incident occurred in a spur of moment without any premeditated mind. The prosecution has not been able to prove its case beyond reasonable doubt. It has been further submitted that the appellant was on bail during trial and has not misused the liberty of bail. It is further submitted that the appellant is innocent and he has no criminal history to his credit. Since there is no likelihood of early hearing of the appeal in near future, the appellant may be released on bail pending appeal. Besides the above submissions, learned counsel for the appellant has also tried to touch upon at length the circumstances which led to the false implication of accused - appellant.

6. On the other hand, learned AGA vehemently opposed the bail application and submitted that specific role of assault has been

assigned to all the three named accused persons in this case. The deceased was inflicted injuries by use of belt and *Danda*. The medical report fully corroborates the prosecution version and serious injuries have been found upon the body of the deceased. He was taken to the hospital in unconscious condition and PW5-Dr.Manish Rawat has made a specific statement in his evidence that the general condition of the injured was very serious and he was immediately kept on Ventilator in the ICU. A fracture was found in his neck and cord injury as well was discovered. He was unable to move even on account of injuries inflicted upon his body and there was very less chance of his survival. It is further submitted that although PW-1 and PW-4 have been declared hostile during the trial, but PW1-the informant and PW3-the wife of the deceased, who are eye-witnesses of the case, have fully corroborated the prosecution version in their statement and the guilt of the present applicant has been affirmed by them in their deposition before the court. It is further submitted that in an occurrence like the present one, the accused applicant is not entitled to get any mercy from this Court in the form of bail and the bail application is liable to be rejected.

7. There is a difference between grant of bail under Section 439 Cr.P.C. in a case of pre trial and suspension of sentence under Section 389 Cr.P.C. for grant of bail post conviction, as in a case of post conviction bail there is a finding of guilt and question of presumption of innocence does not arise, therefore, the principle of bail being the rule and jail an exception is not attracted in such cases. The discretion under Section 389(1) Cr.P.C. is to be exercised judiciously and the Court is under an obligation to consider, whether any cogent grounds were disclosed which might give substantial doubts about the validity of conviction and whether there is a likelihood of unreasonable delay in disposal of appeal. Supreme Court in a recent judgment passed in **Preet Pal Singh vs. State of U.P. and another, (2020) 8 SCC 649** held as under:

*"In considering an application for suspension of sentence, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction prima facie erroneous. Where there is evidence that has been considered by the Trial Court, it is not open to a Court considering application under Section 389 to re-assess and/or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail."*

8. I have perused the judgment and the records of the lower court

with the assistance of the learned counsel for the parties.

9. In the facts and circumstances of the present case and keeping in view the evidence adduced by the prosecution, the complicity of the applicant in the present case, the role assigned to him, injuries sustained by the deceased, the medical evidence, etc. without going into the merits of the case, I do not find it a fit case for suspending the sentence and enlarging the appellant-applicant-**Imran** on bail.

10. Accordingly, the application for bail and suspension of sentence is **rejected**.

**Order Date :- 26.7.2024**

LN Tripathi