

Court No. - 32

Case :- CRIMINAL APPEAL No. - 604 of 2018

Appellant :- Monu @ Vipin

Respondent :- State Of U.P.

**Counsel for Appellant :- Pradeep Kumar Rai,
Ayank Mishra ,Dileep Kumar, Saurabh Trivedi**

**Counsel for Respondent :- G.A., Ashish
Kumar Srivastava, Sandeep Tripathi, Tarun
Kumar Sharma**

.

WITH

Case :- CRIMINAL APPEAL No. - 490 of 2018

Appellant :- Omkari And Another

Respondent :- State Of U.P.

**Counsel for Appellant :- Mr Pradeep Kumar
Rai, Mr Saurabh Trivedi**

**Counsel for Respondent :- G.A., Ashish
Kumar Srivastava, Tarun Kumar Sharma**

.

WITH

Case :- CRIMINAL APPEAL No. - 516 of 2018

Appellant :- Sachin

Respondent :- State Of U.P.

**Counsel for Appellant :- Saurabh Trivedi,
Ayank Mishra, Dileep Kumar, Pradeep Kumar
Rai, Sandeep Tripathi**

**Counsel for Respondent :- G.A., Ashish
Kumar Srivastava, Tarun Kumar Sharma**

.

WITH

Case :- CRIMINAL APPEAL No. - 519 of 2018

Appellant :- Sangeeta And Anr.

Respondent :- State Of U.P.

**Counsel for Appellant :- Saurabh Trivedi,
Jagdish Prasad Mishra, Pradeep Kumar Rai**

Counsel for Respondent :- G.A., Ashish Kumar Srivastava, Sandeep Tripathi, Tarun Kumar Sharma

Hon'ble Shashi Kant Gupta,J.
Hon'ble Bachchoo Lal,J.

Re: Criminal Misc. Bail Applications

1. Counter affidavits have been filed today by the learned A.G.A. is taken on record.

2. We have heard Mr. Dileep Kumar, learned counsel for the appellants, Mr. Tarun Kumar Sharma, Ms. Margret Garima Roberts, Advocate holding brief of Mr. Ayank Mishra, learned counsel for the complainant and learned A.G.A on the bail prayer of the appellants, who have been found guilty under sections 498A, 304B IPC and Section 3/4 D.P. Act in Session Trial No. 1578 of 2008, Case Crime No. 154 of 2008, Police Station Jansath, District Muzaffar Nagar and sentenced to suffer various terms of imprisonment, maximum being life imprisonment. Fine has also been imposed.

3. Perusal of the record reveals that the marriage of the deceased- Rajni was solemnized with the appellant-Sachin son of Ratan Singh on 27.11.2002 and the incident is said to have

occurred on 17.02.2008. According to the first information report, soon after the marriage the deceased was being harassed and tortured by her in-laws including her husband in connection with demand of dowry and had thrown her out from the house, upon which, the informant-Om Pal Singh went to the house of appellants (in laws of the deceased) and tried to persuade them and left his daughter to her in-laws house. On 17.02.2008 at around 9 O'clock, the son of the informant came to know through a third person on telephone, on which, son of the informant Kaptan alias Gulab Singh and Jeetendra (brother in law/Jija) went to the house of the deceased. When they entered the house, they saw that the mother in law-Omkari, sister in law-Sangeeta and Suneeta, husband-Sachin and father in law Ratan Singh were catching hold of the deceased and Monu @ Vipin was carrying country-made pistol in his hand, who fired shot on the stomach of the deceased, as a result of which, she died on the spot. In the F.I.R., it has been further stated that the occurrence was witnessed by the son of the informant- Kaptan alias Gulab Singh and deceased's brother in

law/Jija-Jeetendra.

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4. Learned counsel for the appellants submits that the appellants are innocent and have been falsely implicated in the present case. He further submitted that it is most improbable that in-laws of the deceased will wait for the witnesses to arrive their house to witness the incident, as such, the whole story has been concocted and fabricated. He further submitted that there is absolutely no demand of dowry and in fact, the deceased committed suicide due to some family dispute. He further submitted that the main role of firing has been assigned to the appellant- Monu @ Vipin and rest of the appellants have only been assigned the role of catching hold of the deceased. He further submitted that even the Trial Court was not sure whether it is a case of suicide or homicide. He further submitted that there is no cogent, convincing and satisfactory evidence on record to establish the culpability of the accused appellants in the commission of offence. It is further submitted that if the accused-appellants are released on bail, they will never misuse the

liberty of bail. He further submitted that there is no likelihood of early hearing of this appeal in near future.

5. Per contra, learned AGA and learned counsel for the complainant have opposed the prayer for bail and supported the trial court's judgment. Learned A.G.A further submitted that the court below has given cogent, convincing and satisfactory reason while passing the impugned judgment and order. He further submitted the incident has occurred within seven years of the marriage and specifically it has come on record that the deceased was being harassed and tortured by her in-laws including her husband-Sachin in connection with the demand of dowry. He further submitted that the incident has been witnessed by the son of the informant-Kaptan alias Gulab Singh and Jeetendra-brother in law (Jija) of the deceased and gave a graphic description of the incident. He further submitted that the medical evidence on record fully corroborates the ocular version. He further submitted that in the F.I.R., it has been stated that one fire was shot on the stomach of the deceased

by the accused-appellant-Monu @ Vipin and rest of the accused-appellants have only been assigned the role of catching hold of the deceased. It is also notable that the fire was made from the country-made pistol and not from the licensee pistol, therefore, theory of a suicide can not be believed. He further submitted that Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him and there is ample evidence on record to demonstrate that it is case of dowry death. He further submitted that the court below has very categorically recorded the finding against the appellants. Having regard to over all facts and circumstances as well as keeping in view the evidence available on record and the nature of crime committed by them, the appellants do not deserve to be released on bail.

6. Keeping in view the rival submissions as advanced by learned counsel for the parties, nature of the case, judgment and other materials available on record, we are of the view that the appellants namely Omkari, Ratan Singh, Sangeeta

and Suneeta should be released on bail.

7. So far as the appellants namely Monu @ Vipin, who is the main assailant & Sachin, husband of the deceased are concerned, no case for their bail is made out. The prayer for bail of the accused-appellants namely Monu @ Vipin & Sachin is declined and the bail application of the appellants namely Monu @ Vipin & Sachin is hereby rejected.

8. Without going into the merits of the case, let the appellants namely Omkari, Ratan Singh, Sangeeta and Suneeta convicted in S.T. No. 1578 of 2008, Case Crime No. 154 of 2008, under Sections 498A, 304-B IPC and Section $\frac{3}{4}$ D.P. Act, Police Station Jansath, District Muzaffar Nagar be released on bail during the pendency of appeal on executing a personal bond with two reliable sureties each in the like amount to the satisfaction of the Court concerned.

9. The prayer for stay of realization of fine imposed upon the appellants is hereby refused.

10. On acceptance of bail bonds and personal bond, the lower court shall transmit photostat copies thereof to this Court for being kept on the record of this appeal.

11. The bail application is, accordingly, disposed of.

Order Date :- 29.5.2018
Arun