

Court No. - 67

Case :- CRIMINAL APPEAL No. - 7388 of 2017

Appellant :- Ompal

Respondent :- State of U.P.

Counsel for Appellant :- Mahipal Singh, Ajay Kumar Gautam

Counsel for Respondent :- G.A., Nitin Srivastava, Pawan Singh Pundir

Hon'ble Rahul Chaturvedi, J.

Hon'ble Mohd. Azhar Husain Idrisi, J.

(Order on Sentence Suspension Application)

Heard Sri Ajay Kumar Gautam, learned counsel for the appellant, Sri Pawan Singh Pundir, learned counsel for the informant as well as learned A.G.A.

This criminal appeal has been preferred against the impugned judgment and order of conviction dated 12.10.2017 passed by learned Additional Sessions Judge, Court No.1, Baghpat while deciding the Sessions Trial No.449 of 2004 arising out of Crime No.211 of 2004, P.S. Ramala, District Baghpat, convicting the appellant under section 148 IPC for three years rigorous imprisonment, under section 452 IPC for seven years rigorous imprisonment and a fine of Rs.2,000/-, under section 302/149 IPC for life imprisonment and a fine of Rs.10,000/-, under section 307/149 IPC for ten years imprisonment and a fine of Rs.5,000/-, under section 429 IPC for five years rigorous imprisonment and a fine of Rs.2,000/-, under section 120B IPC for life rigorous imprisonment and a fine of Rs.10,000/-, under section 5 of the Explosive Substance Act for two years rigorous imprisonment.

Submission made by learned counsel for the appellant is that the present prosecution was faced by ten accused persons including Sahab s/o Atal Singh and Sahab Singh s/o Ram Singh who died during trial. Fact remains that all the ten accused persons were attributed general role of assault upon the deceased who are four in numbers and injuring one person. No doubt that this is gruesome murder of four persons making one person injured in this dreaded and heinous offence but at the same time, it is contended by learned counsel for the appellant that the present appellant is languishing in jail since 20.08.2004 i.e. almost 19 years in jail. It is next contended that identically situated co-accused persons were admitted on bail by Hon'ble the Apex Court on different occasions.

Learned counsel for the informant has opposed the prayer for bail but has unable to point out any point of distinction between the present appellant and rest of the accused persons who were granted bail by Hon'ble the Apex Court. There is no denial of the fact that the appellant is facing incarceration for almost 19 years.

Keeping in view the nature and gravity of the offence and taking into account the period of incarceration undergone by the appellant as well as in the light of **Saudan Singh Vs. The State of Uttar Pradesh** in Criminal Appeal No.308 of 2022 decided on 25.02.2022 and **Suleman v. State of U.P.** in Criminal Appeal No.491 of 2022 decided on 09.05.2022. Though, the paper book of the case is ready and in receipt of both the counsels, but it was earnestly urged by learned counsel for the appellant that the appellant is in jail from last 19-20 years and similarly situated persons were bailed out by Hon'ble the Apex Court.

With the solemn undertaking given by the counsel for the appellant that the appellant would assist the court in final hearing as and when listed in future, let the appellant-**Ompal** be released on bail in the aforementioned case on his furnishing a personal bond and two heavy sureties(one of which shall be family member) each in the like amount to the satisfaction of the court concerned.

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

50% of the fine awarded by the court below under the impugned judgment shall be deposited by the applicant within a month from his release on bail.

(Order on Appeal)

It is given to understand that paper book is ready and both the parties are ready to argue the case on merit for final disposal.

List this case for final hearing in the week commencing 25.09.2023 before appropriate Court.

Order Date :- 16.8.2023

Sumit S