

Court No. - 44

Case :- CRIMINAL APPEAL No. - 2260 of 2022

Appellant :- Rajeev @ Chotey Guddu And 4 Others

Respondent :- State of U.P.

Counsel for Appellant :- Narendra Kumar Singh, Ambrish Kumar Kashyap, Lakshman Singh, Lavkush Kumar Bhatt, Rewti Raman Patel

Counsel for Respondent :- G.A., Somendra Singh

Hon'ble Arvind Singh Sangwan, J.

Hon'ble Shiv Shanker Prasad, J.

Ref.: Criminal Misc. Bail Application

1. On the matter being taken up, learned counsel for the appellant states that he has given a notice to the learned counsel for the informant that the matter shall be taken up on the mention being made by him but the same has not been accepted by the learned counsel for the informant saying that he shall remain present before this Court when the matter is taken up. However, when the matter is taken up, learned counsel for the informant is not present.

2. This is the first application seeking suspension of sentence of accused-appellants, Rajeev @ Chhotey Guddu, Avdhesh, Rameshwar, Jogeshwar and Ram Sewak.

3. The learned counsel for the appellants in support of the bail application has drawn the attention of the Court to the order passed by a Coordinate Bench of this Court dated 29th May, 2023 passed in Criminal Appeal No. 3478 of 2022 (Dipu Vs. State of U.P.) along with two connected Criminal Appeal No. 2257 of 2022 (Sharad @ Chotey Bhaiya Vs. State of U.P.), whereby the co-accused, namely, Dipu and Sharad @ Chotey Bhaiya have been granted suspension of sentence. The relevant portion of the order is being extracted herein below:

"Learned counsel for the accused submits that accused-appellant has no motive to commit the unfortunate offence in which a 12 year boy has lost his life. The injury sustained by the deceased was caused by some other person but due to village enmity and party bandi the appellant has been falsely implicated in the present case. The prosecution case that the accused persons have fired indiscriminately on the informant party but only solitary wound has been sustained by the deceased, which has been assigned upon the accused-appellant-Deepu, creates a doubt. The statement of Sukhendra (deceased) recorded by the Investigating Officer in the police station under Section 161 Cr.P.C. also creates a doubt in the prosecution version when as a matter of fact there is no other dying declaration recorded by the competent authority. It is settled law that the statement given before the police has no evidentiary value. Learned counsel further submits that the accused-appellant Deepu fired upon the deceased Sukhendra by rifle of his father from a close distance but from the autopsy report of the deceased it is apparent that the blackening

scorching and tattooing are present on the body of the deceased, which makes the entire prosecution story doubtful. It is next stated that the appeal would take sufficient time to be heard and in such circumstances the appellants are entitled to be enlarged on bail particularly as they have no other criminal history.

Learned A.G.A. has opposed the prayer made in the bail application and states that the appeal itself may be heard but could not dispute the aforesaid facts.

Considering the facts and circumstances of the case as also the submissions made, without commenting upon merits of the case, we are of the opinion that the appellants are entitled to be released on bail. "

4. Learned counsel for the appellant further submits that since the case of the appellants are on better footing to that of the co-accused Dipu, who has been assigned the main role of assaulting the deceased and injured person by his fire arm and more or less identical to that of the co-accused Sharad @ Chotey Bhaiya, the appellants are also liable to be granted suspension of sentence. Learned counsel for the appellants next submits that no motive is attributed to the accused-appellants. Apart from the above, learned counsel for the appellants submits that the accused-appellants have no criminal antecedents to their credit except the present one, as per the counter affidavit filed on behalf of the State. The accused-appellants are in jail since 22nd March, 2022 and they have undergone nearly one year and nine months of incarceration. Learned counsel for the appellants, therefore, submits that since the appeal is not likely to be heard finally in the near future, the accused-appellants may be granted suspension of sentence during the pendency of the present appeal.

5. Learned A.G.A. for the State could not dispute the above factual aspects.

6. Considering the submissions made by the learned counsel for the parties and the fact that the main co-accused Dipu along with other co-accused Sharad @ Chotey Bhaiya have already been granted suspension of sentence and also the fact that the present appeal is not likely to be listed for final disposal in near future, we grant bail to the accused-appellants during the pendency of the appeal.

7. Let accused-appellants, Rajeev @ Chhotey Guddu, Avdhesh, Rameshwar, Jogeshwar and Ram Sewak convicted and sentenced by the judgment and order dated 22.03.2022 passed by Additional District & Sessions Judge/Special Judge (E.C. Act), Farrukhabad in Sessions Trial No. 324 of 1999, arising out of Case Crime No.120/1999, under Sections 147, 148, 452, 302/149 I.P.C., Police Station Mohamdabad, District Farrukhabad be released on bail during the pendency of the appeal subject to their furnishing personal bonds each and two sureties each of the like amount to the satisfaction of the Court concerned with the following conditions :-

(i) The appellants shall file an undertaking to the effect that they shall not seek any unnecessary adjournment.

(ii) The appellants shall not leave India without permission of this Court.

(iii) The appellants shall inform the change of address within 10 days, failing which the State shall be at liberty to request for cancellation of his bail.

(iv) Half of the fine shall be deposited within three months from today.

8. In view of the above, this bail application is allowed.

Ref.:Memo of Appeal

List this appeal for hearing after preparation of paper book.

(Shiv Shanker Prasad, J.)

(Arvind Singh Sangwan, J.)

Order Date :- 29.1.2024

Sushil/-