

Court No. - 42

Case :- CRIMINAL APPEAL No. - 1721 of 2020

Appellant :- Sonpal

Respondent :- State Of U.P

Counsel for Appellant :- Ritesh Singh, Suresh Singh, Vivek Kumar Mishra

Counsel for Respondent :- G.A.

With

Case :- CRIMINAL APPEAL No. - 5233 of 2021

Appellant :- Tulsiram

Respondent :- State of U.P.

Counsel for Appellant :- Ritesh Singh, Suresh Singh, Vidya Bhaskar Singh

Counsel for Respondent :- G.A.

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Mohd. Azhar Husain Idrisi, J.

Ref. Criminal Misc. Application U/S 389(1) Cr.P.C.

An application for suspension of sentence and grant of bail has been filed in this appeal on behalf of accused appellants Sonpal and Tulsiram, who have been convicted in Session Trial No. 469 of 2014 (State vs. Pushpendra and others) arising out of Case Crime No. 374 of 2014, under Section 302/34 IPC, Police Station Sindhauli, District Shahjahanpur and the maximum sentence awarded to them is life imprisonment.

As per the prosecution case on the date of incident a fight had taken place between the brother of the informant and the accused appellants regarding consumption of liquor. It is thereafter that while deceased was returning after purchase of bidi that the two accused caught hold of him and the other accused caused injuries of banka. Recovery of weapon of assault has been made from the accused appellants.

Learned counsel for the appellants submits that the incident occurred at the spur of the moment and was not a result of any pre-

meditation. Submission is that one of the arguments available to the accused is to contend that the offence at best would fall within Section 304 I.P.C. and not under Section 302 I.P.C. It is also submitted that appellants have undergone incarceration of more than 10 years and 5 months as on 13th November, 2023. Submission is that hearing of the appeal may take sufficiently long, as paper book has not been prepared, therefore, considering the period of incarceration already undergone by accused appellants and they have also no criminal history, as such they are entitled for grant of bail.

Learned A.G.A. has opposed the prayer for grant of bail.

Considering the period of incarceration undergone by the appellant and they have otherwise no criminal history, and hearing of the appeal may take sufficiently long, as such without further commenting upon the merits of the case, we deem it appropriate to release the appellants on bail.

Let the accused appellants- **Sonpal and Tulsiram** be released on bail in the above case on furnishing personal bond and two sureties each in the like amount to the satisfaction of the Chief Judicial Magistrate concerned, subject to furnishing undertaking that they will co-operate in the hearing of the appeal.

Fine imposed shall be deposited within six weeks of release of the accused appellants.

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

List this appeal alongwith paper book for 'final hearing' in due course.

Order Date :- 6.5.2024

Israr