

**Court No. - 48**

**Case :-** CRIMINAL APPEAL No. - 2669 of 2020

**Appellant :-** Ashok Gupta

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

**Counsel for Appellant :-** Shashi Kant Srivastava, Mani Kant Srivastava, Yanendra Pandey

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

**Hon'ble Siddhartha Varma, J.**

**Hon'ble Manish Kumar Nigam, J.**

**Ref: Criminal Misc. Bail Application No.02 of 2020**

Heard Shri Yanendra Pandey, learned counsel for the applicant and Shri J.K. Upadhyay, learned A.G.A. appearing for the State and perused the record.

The instant application has been filed under Section 389 Cr.P.C. to suspend the sentence of conviction and to release the applicant on bail in S.T. No.16 of 2016, arising out of Case Crime No.181 of 2015, under Section 302 of I.P.C. and in S.T. No.13 of 2016, arising out of Case Crime No.182 of 2015, under Section 4/25 Arms Act, Police Station - Gal Shahid, District - Moradabad.

It is the contention of learned counsel for the appellant that the appellant-applicant is innocent and has been falsely implicated in the case. He submits that statement of PW-1 - Girdhar Sharan Sharma is not reliable in view of the fact that cross-examination is inconsistent with the examination-in-chief. In the examination-in-chief, he has stated that he was at the spot where the incident occurred at 8 p.m. wherein in the cross-examination, he has stated that when the phone call came from the Sai Hospital, then he reached the spot. In view of the statement made by P.W.-1, learned counsel for

the appellant further states that testimony of PW-2 becomes also doubtful as PW-1 has stated that PW-2 was present on the spot. Still further, relying upon the testimony of the Investigating Officer, learned counsel for the appellant states that PW-11 - Shishu Pal Sharma, Investigating Officer, has stated that blade of the knife was not stiff. It is further submitted that appellant has remained in jail for a period of 7 years and 7 months. It is also submitted that appellant has no criminal history and that the conduct and behaviour of the appellant in jail was good and to the satisfaction of the jail authorities. Still further, learned counsel for the appellant submits that since the appeal is not likely to be heard and decided expeditiously in the near future, the applicant is, therefore, entitled to be released on bail.

In rebuttal, learned AGA has opposed the bail application but he could not dispute fact that appellant has remained in jail for more than 7 years and also that appellant has no criminal history to his credit.

We have perused the judgement and records of the lower court with the assistance of the learned counsel for the parties. We are of the opinion that the sentence awarded by the trial court be kept in abeyance in respect of applicant and the applicant be enlarged on bail.

Consequently, the prayer for bail is granted. The bail application is **allowed**.

Without expressing any opinion on the merit of the case, let the applicant - **Ashok Gupta**, convicted and sentenced in the aforesaid case, be released on bail on his furnishing

personal bonds with two sureties each in the like amount to the satisfaction of the court concerned.

Fine imposed by the trial court shall remain stayed till the decision of the appeal.

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

Office to comply with the conditions as have been provided by Hon'ble Supreme Court in the case of In **Re Policy Strategy for Grant of Bail passed in SMWP (Criminal) No.4 of 2021** by order dated 31.01.2023.

### **Order on Appeal**

Order sheet indicates that Lower Court Record has been received.

Office is directed to prepare paper book.

List this appeal on 7.11.2023 for final hearing.

**Order Date :- 5.5.2023**

Rishabh

[Manish Kumar Nigam, J.] [Siddhartha Varma, J.]