

Court No. - 43

Case :- CRIMINAL APPEAL No. - 3162 of 2020

Appellant :- Shiv Kumar Ram

Respondent :- State of U.P.

Counsel for Appellant :- Ayush Mittal, Chandra Bhushan Tiwari, Navin Kumar Tiwari, Ramesh Chandra Chaturvedi, Sanjeev Kumar Tiwari, Shreesh Srivastava, Vishnu Pandey

Counsel for Respondent :- G.A.

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Dr. Gautam Chowdhary, J.

Ref: Criminal Misc. Bail Application No.02 of 2023)

1. This bail application has been filed on behalf of the accused appellant Shiv Kumar Ram, who has been convicted in Sessions Trial No.159 of 2018 (State Vs. Shiv Kumar Ram), under Section 302 IPC, arising out of Case Crime No.56 of 2018, P.S. Sarai Lakhansi District Mau and the maximum sentence awarded to him is life imprisonment.

2. As per the prosecution case, the incident occurred on 11.02.2018 at 12:30 noon when the informant's brother had gone to operate his tube well. There was some defect noticed and in order to borrow a screw driver, deceased went to the accused's tube well. A dispute at that stage occurred between the deceased and the accused whereafter the accused is said to have assaulted the deceased with a shovel as a result of which the informant's brother died. Relying upon the testimony of eye witnesses as well as documentary evidence in the nature of postmortem report etc which corroborated with the eye witnesses account, the court of session has convicted and sentenced the accused appellant as per above.

3. Learned counsel for the appellant submits that the incident occurred at the spur of moment on a trivial issue without any pre-meditation. It is submitted that the offence, at best, would not travel beyond Section 304 IPC and since the accused appellant has otherwise no criminal history and he is languishing in jail for the last more than six years, as such he be enlarged on bail.

4. Learned A.G.A. although opposes the bail application but the facts asserted on behalf of the appellant as also the period of incarceration are not disputed.

5. In the facts of the case, triable issues arise for consideration at the time of hearing of the matter. Considering the fact that accused appellant has no criminal history and is languishing in jail for the last nearly six years and hearing of the appeal may take sufficiently long; as paper-book etc have not been prepared; without further commenting upon the merits of the matter; we are of the view that the accused appellant is entitled to be released on bail.

7. Let the accused applicant/appellant- Shiv Ram Kumar 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 he will co-operate in the hearing of the appeal.

8. Fine imposed shall be deposited within six weeks of release of the accused-appellant.

9. 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.

10. Office is directed to prepare paper book and list this appeal for hearing on its due turn.

Order Date :- 30.8.2024

C. MANI