

Court No. - 42

Case :- CRIMINAL APPEAL No. - 5277 of 2019

Appellant :- Harendra @ Pappan

Respondent :- State of U.P.

Counsel for Appellant :- Amit Daga, Dhirendra Kumar Pal, Jahar Singh (Kashyap), Satendra Singh

Counsel for Respondent :- G.A., Anand Mohan Pandey, Satish Kumar Yadav

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Mohd. Azhar Husain Idrisi, J.

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

1. An application for suspension of sentence and grant of bail has been filed in this appeal on behalf of accused appellant Harendra @ Pappan, who has been convicted in Session Trial No. 100 of 2009 (State vs. Harendra @ Pappan) arising out of Case Crime No. 424 of 2008, under Sections 302, 120B IPC, Police Station Dannahar, District Mainpuri and the maximum sentence awarded to him is life imprisonment.
2. As per the prosecution case, on 21.07.2008 the informant and his sons Sunil Kumar and Sanoj had come to Mainpuri on two motorcycles and while returning home at about 02.00 pm an Indica Car without any number plate came from front and accused appellant got down alongwith his wife and fired upon Sunil due to which he died. The prosecution has relied upon the testimony of PW-1 and PW-4, who allegedly were present at the place of incident.
3. Learned counsel for the appellant submits that PW-1 in his testimony has admitted that he received information with regard to death of deceased at Village Nagla Heera while PW-4 has stated that he was with his father at the time of incident and that PW-2 is also not very specific in implicating the accused appellant. Submission is that none of the eye witnesses have actually seen the incident and, therefore, the conviction and sentence of accused appellant is based primarily on suspicion and less of legally admissible evidence. It is stated that appellant has no previous criminal history and he is languishing in jail since 30.07.2019. Argument is that as the hearing of appeal may take some more time, therefore, the accused appellant be enlarged on bail.

4. Learned A.G.A. for the State and Shri Tanmay Gupta holding brief of Shri Anand Mohan Pandey for the informant have strongly opposed the prayer for grant of bail but could not dispute the submissions advanced on behalf of the accused appellant.

5. Having heard counsel for the parties and considering the argument advanced on behalf of the accused appellant as also the fact that hearing of appeal may take sufficiently long and the appeal raises triable issue and the question as to whether alleged eye witnesses were present at the place of occurrence is an aspect to be examined at the stage of hearing of appeal, without commenting upon merits of the case, we are of the view that the appellant is entitled to be released on bail.

6. Let the accused appellant Harendra @ Pappan 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.

7. Half of fine imposed shall be deposited within six weeks of release of the accused appellant and remaining fine shall remain stayed.

8. 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.

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

Order Date :- 15.5.2024

Ashok Kr.