



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2422 of 2017

Manoj Kumar And 2 Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Rajrshi Gupta, Suresh C. Dwivedi
Counsel for Respondent(s) : G.A., Prabhat Kumar Singh, Prashant Kr. Singh, Umesh Kumar

Court No. - 44

**HON'BLE RAJEEV MISRA, J.
HON'BLE DR. AJAY KUMAR-II, J.**

Ref: On Bail

Heard Mr. Raj Kumar, Advocate, holding brief of Mr. Rajrshi Gupta, the learned counsel for appellant and the learned A.G.A. for State.

This second application for bail has been filed by applicant/appellant seeking his enlargement on bail during the pendency of present appeal.

The first bail application of applicant/appellant was rejected by this Court vide order dated 5.10.20217. For ready reference the order dated 5.10.20217 is reproduced herein below;

Sri I.K. Chaturvedi, learned counsel has put in appearance on behalf of appellant by filing his Parcha, today in the Court, which is taken on record.

Order on Crl. Misc. Bail Application No.158639 of 2017.

Heard Sri I.K. Chaturvedi, learned counsel for the appellants, Sri Prabhat Kumar Singh, learned counsel for the complainant Sri Ashish Pandey, learned A.G.A. for the State and perused the lower court record.

It has been contended by the learned counsel for the appellant that the appellant nos.1 namely Manoj Kumar and appellant no.2 namely Anand Kumar are named in the first information report, subsequently, during the course of investigation the name of appellant no.3 came into light. It is further submitted that as per the prosecution story the appellant nos.2 and 3 are said to have caught hold the deceased and appellant no.1 namely

Manoj Kumar shot dead the deceased. The trial court has misread the evidence on record and wrongly convicted the appellants. He further submits that the appellant no.1 is in jail since 10.12.2014 and appellant nos.2 and 3 are in jail since 10.4.2017.

Learned counsel for the complainant and learned A.G.A. opposed the prayer for bail of the appellants and submitted that the appellant no.1 Manoj Kumar is main assailant and is having criminal history of 24 cases.

Without expressing any opinion on the merits of the case and considering the submission advanced, We find no good ground for grant of bail to the appellant no. 1 Manoj Kumar involved in the aforesaid case.

Accordingly, the prayer for bail of appellant no.1 namely Manoj Kumar is rejected.

So far as the appellant nos.2 and 3 are concerned without expressing any opinion on the merits of the case and considering the facts and circumstances of the case as well as the sentence awarded to the appellant nos.2 and 3, We are of the opinion that the appellant nos.2 and 3 are entitled to be released on bail.

Let the appellants Anand Kumar and Layak Singh convicted and sentenced in S.T. No.94 of 2015 arising out of Case Crime No.430 of 2014, under Section 302 I.P.C. and S.T. No.95 of 2015 arising out of case crime no.488 of 2014 under section 3/25 Arms Act, police station Dibiyapur, District Auraiya be released on bail on their furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned.

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

The solitary ground urged by the learned counsel for applicant/appellant in support of this application for bail is that applicant/appellant is under incarceration since 10.12.2014. As such, applicant/appellant has undergone more than 10 years and 9 months of incarceration. On account of heavy pendency of criminal appeals in this Court, there is no likelihood of the present appeal being heard in near future. On the aforesaid premise, the learned counsel for applicant/appellant submits that applicant/appellant is liable to be enlarged on bail during the pendency of present appeal. In case the applicant/appellant is enlarged on bail, then in that eventuality he shall

not misuse the liberty of bail and shall co-operate the hearing of present appeal.

Per contra, the learned A.G.A. representing State/opposite party-1 has opposed this repeat application for bail. Learned A.G.A. submits that since applicant/appellant is a life convict, therefore, merely on the ground of incarceration, applicant/appellant cannot be enlarged on bail. Learned A.G.A. thus submits that in view of the above, this repeat application for bail is liable to be rejected.

Having heard Mr. Raj Kumar, Advocate, holding brief of Mr. Rajrshi Gupta, the learned counsel for applicant/appellant, the learned A.G.A. for State, upon perusal of material brought on record, as well as complicity of applicant/applicant, accusations made coupled with the fact that the only argument for consideration for deciding the present repeat application for bail is whether the applicant/appellant is liable to be enlarged on bail, in view of the period of incarceration undergone by him. The issue arising for consideration in this repeat application for bail is no longer res integra and stands settled by the judgement of Supreme Court in **Omprakash Sahni Vs. Jai Shankar Chaudhary, (2006) 6 SCC 123**, wherein the Apex Court has observed that only when the appellate Court records a finding that prima facie the appeal is liable to be allowed, that a life convict can be enlarged on bail during the pendency of appeal. Since no argument has been urged on the merits of appeal, therefore, such finding cannot be returned by us. We therefore, do not find any good or sufficient ground so as to enlarge the applicant/appellant on bail.

In view of above, the present repeat application for bail fails and is liable to be rejected.

It is accordingly **rejected**.

Ref: On Appeal

List this appeal for hearing in the week commencing 26.10.2025.

October 6, 2025
Arshad

(Dr. Ajay Kumar-II,J.) (Rajeev Misra,J.)