

Court No. - 51

Case :- CRIMINAL APPEAL No. - 4175 of 2015

Appellant :- Mohsin

Respondent :- State Of U.P.

Counsel for Appellant :- M.J. Akhtar, V.M. Zaidi

Counsel for Respondent :- Govt. Advocate, Nazrul Islam Jafri

Hon'ble Vipin Sinha, J.

Hon'ble Ifaqat Ali Khan, J.

Heard Sri V. M. Zaidi, learned senior counsel for the applicant-appellant, Sri N. I. Jafri, learned counsel for the complainant and learned A.G.A. for the State on the first bail application.

In the present case bail is being sought in appeal against the order of conviction.

We have perused the impugned judgment and order passed by the trial court convicting the appellant.

The contention as raised at the Bar by learned counsel for the appellant is that during trial appellant was on bail which liberty has not been misused or abused by the appellant; appellant has not previous criminal history; only evidence against the appellant is that of a last seen, however, the last seen evidence is prior to four days when the body was recovered. Further contention is that there is motive for the appellant to commit the murder. The court below has categorically recorded a finding to the effect "*nishay hi mamle mein koi hetuk prakat roop se nahi bataya gaya hai na hi bachav paksh ne apne tarko mein is bindu par kuchh kaha hai, is sambandh mein is mamle mein hetuk ka abhav nischay he hai*". It is next contended that in these facts and circumstances, the appeal becomes arguable and there is likelihood of the appeal being allowed if it is heard on merit, however, there is no likelihood of the appeal being heard in near future.

Learned A.G.A. has opposed the prayer for bail, however he has not disputed the aforesaid contention as made by the learned counsel for the appellant.

In view of the aforesaid facts and circumstances of the case, without expressing any opinion on the merits of the case, at this stage, prima facie, a case for bail has been made out. However, the said prima facie view will not in any manner adversely affect the case of the prosecution.

The prayer for bail is granted. The bail application is allowed.

Let the applicant-appellant Mohsin convicted and sentenced vide impugned judgment in S. T. No. 1035 of 2009, Case Crime No. 178 of 2009, U/s 302, 364 IPC, P.S. Lisari Gate, District Meerut be released on bail on his furnishing a personal bond and two local sureties each of the like amount to the satisfaction of court concerned.

As soon as personal and surety bonds are furnished, photocopies of the same are directed to be transmitted to this Court forthwith by the

concerned court to be kept on record.

The applicant - appellant is directed to deposit 50 per cent of the fine within a period of one month from the date of his release from jail. The realization of rest of the fine shall remain stayed during the pendency of the appeal. It is made clear that in case, the fine, as directed, is not deposited within the time as specified above, the same shall be recovered in accordance with law.

Since the lower court record has been received, the hearing of the appeal be expedited under Chapter-VIII Rule 33A of the Rules of Court.

Let the paper book be prepared within two months from today and thereafter appeal be listed for hearing before appropriate Bench.

Order Date :- 13.9.2018

Kuldeep