

Court No. - 42

Case :- CRIMINAL APPEAL No. - 5486 of 2021

Appellant :- Raghuvar Singh And Another

Respondent :- State of U.P.

Counsel for Appellant :- Akhilesh Chandra Shukla, Ashwani Kumar, Dharmendra Dhar Dubey, Krishna Kant Vishwakarma, Umesh Pal Singh, Zafar Abbas

Counsel for Respondent :- G.A., Sachin Kumar Sharma

With

Case :- CRIMINAL APPEAL No. - 5450 of 2021

Appellant :- Aram Singh And 4 Others

Respondent :- State of U.P.

Counsel for Appellant :- Akhilesh Chandra Shukla, Dharmendra Dhar Dubey, Rakesh Pati Tiwari, Umesh Pal Singh

Counsel for Respondent :- G.A.

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Mohd. Azhar Husain Idrisi, J.

(Ref: Criminal Misc. Bail Applications)

These bail applications have been filed on behalf of accused appellants Raghuvar Singh, Ram Autar, Aram Singh, Mukesh, Dharm Veer, Dharm Pal and Bhagwan Das, who have been convicted in Sessions Trial No.190 of 2009 (State Vs. Aram Singh & Ors.), under Sections 302, 364 IPC, arising out of Case Crime No.595 of 2008, P.S. Aonla, District Bareilly and the maximum sentence awarded to them is rigorous life imprisonment.

As per the prosecution case the deceased was implicated in the murder of maternal uncle of accused Raghuvar Singh. FIR has been lodged on 26.9.2008, stating that on 24.9.2008 at about 5.00 PM five accused persons came to the house of the deceased and took him on the pretext of resolving outstanding issues. The deceased did not return. According to informant she tried to lodge a missing report but the same was not entertained. It is on 26.9.2008 that the dead body has been found near the road. Two cartridges have been recovered from Nawab Ka Bagh alongwith certain blood stained clothes. A rifle has also been recovered from one of the accused namely, Aram Singh. In the FSL report the recovered cartridges have not matched with the rifle. Prosecution has come forward with the testimony of the informant as also of one Mukesh, who claims to have seen the deceased in the

company of the accused persons on the 24th night. It is on the basis of such evidence that the accused appellants have been convicted and sentenced as per above.

On behalf of the appellants it is submitted that their implication is only based on suspicion and that the entire FIR version as well as evidence led during trial is not reliable. It is firstly submitted that the rationale of informant going to the accused for settlement is not natural. It is also argued that in the event deceased had left at 5.00 PM on 24.9.2008 in the presence of the wife (informant) a missing report was expected to have been lodged. It is only after the dead body of the deceased has been recovered that the FIR has been lodged. Argument is that the FIR has been lodged based on consultation and deliberation only in order to implicate persons with whom there was previous enmity. So far as testimony of witness Mukesh is concerned, it is stated that though he is the resident of the same village but his statement under Section 161 Cr.P.C. has been recorded after a month which appears to be an afterthought. Other witness of last seen has not been produced. There was no prior involvement for any of the appellants in criminal activity and it is only after the present case that they have been implicated under the Gangsters Act and have been bailed out. Criminal history of appellant Aram Singh and Dharm Veer are also explained on the ground that they have already been acquitted in the previous criminal case. It is submitted that the appeal raises triable issues and none of the appellants have abused the liberty of bail granted to them during trial, as such the accused appellants are entitled to be enlarged on bail.

Sri S.K. Sharma, learned counsel for the informant as well as learned A.G.A. have strongly opposed the prayer made for grant of bail on the ground that the witnesses of last seen are reliable and the informant has truthfully deposed against the appellants.

Having heard learned counsel for the parties, we find that various triable issues arise for consideration in the present case. Arguments that the plea of informant going to accused for compromise is unnatural; no missing report was lodged; FIR has been lodged only after the dead body has been recovered; statement of last seen witness has been recorded after one month are issues that merits consideration at the time of hearing of the appeal. Without further commenting upon the merits of the case, we are of the view that the appellants/applicants are entitled to be released on bail.

Let the accused applicants/appellants - Raghuvar Singh, Ram Autar, Aram Singh, Mukesh, Dharm Veer, Dharm Pal and

Bhagwan Das 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 they will co-operate in the hearing of the appeal.

Half of the fine imposed shall be deposited within six weeks after release of accused appellants and remaining fine shall remain suspended.

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.

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

Order Date :- 25.4.2024

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