

Court No. - 47

Case :- CRIMINAL APPEAL No. - 5446 of 2015

Appellant :- Ishaq

Respondent :- State of U.P.

Counsel for Appellant :- Syed Faiz Hasnain, Yakub Ansari

Counsel for Respondent :- G.A., Rajesh Kumar Mishra

Hon'ble Arvind Singh Sangwan, J.

Hon'ble Ram Manohar Narayan Mishra, J.

Order on Criminal Misc. (Third) Bail Application

1. This is an application seeking suspension of sentence of accused-appellant, **Ishaq** who has been convicted and sentenced under Section 302 of IPC vide judgment and order dated 30.09.2015 passed by Additional Session Judge, Court No.1, Bareilly in Sessions Trial No. 1096 of 2012, Police Station Bhojipura, District Bareilly.

2. This is a third bail application for suspension of sentence. Earlier, first bail application was rejected for want of prosecution and the second bail application was rejected on 20.12.2017. A new ground is taken as per custody certificate dated 12.10.2023 that the appellant has undergone total sentence including with remission 13 years 8 months and 6 days.

3. As per prosecution version, the appellant is the brother-in-law of the deceased and the appellant used to beat his wife and children on minor issues. The incident was witnessed by two prosecution witnesses who has supported the version that the appellant has fired shot with countrymade pistol for killing the deceased.

4. Sri Syed Riyaz Askari, holding brief of Sri Syed Faiz Hasnain, learned counsel for the appellant has submitted that the appellant has four grown up children to support and the appeal is not likely to be listed as it pertains to the year 2015.

5. Learned counsel for the appellant has relied on the decision of the Apex Court in Criminal Appeal No.308 of 2022 (**Saudan Singh vs. State of U.P.**) decided on 25.2.2022 to submit that the accused-appellant may be enlarged on bail during the pendency of the appeal as the appeal is of the year 2015 and is not likely to be heard finally in near future.

6. However, learned counsel for the informant as well as learned A.G.A. for the State submitted that the prosecution witnesses have supported the case but could not dispute the fact that the appellant has no criminal history and he has undergone about more than 11 years of actual sentence.

7. Considering the arguments advanced by learned counsel for the parties, the facts and circumstances of the case, period of sentence already undergone by the accused-appellant and the fact that the appeal is not likely to be listed for final disposal in near future, we grant concession of suspension of sentence to the accused-appellant during the pendency of the appeal in view of the decision of the Apex Court in ***Saudan Singh (Supra)***.

8. Let accused-appellant **Ishaq**, convicted and sentenced in the aforesaid Sessions Trial be released on bail during the pendency of the appeal subject to his furnishing personal bonds and two sureties each of the like amount to the satisfaction of the Court concerned with the following conditions :-

(i) The appellant shall file an undertaking to the effect that he shall not seek any unnecessary adjournment.

(ii) The appellant shall not leave India without permission of this Court.

(iii) The appellant shall inform the change of address within 10 days, failing which the State shall be at liberty to request for cancellation of his bail.

9. Half of the fine shall be deposited within three months from today.

10. In view of the above, this bail application is **allowed**.

Order on Appeal

List when its turn comes.

Order Date :- 1.4.2024

Shivangi