

Court No. - 65

Case :- CRIMINAL APPEAL No. - 6896 of 2017

Appellant :- Phool Chand

Respondent :- State of U.P.

Counsel for Appellant :- Ravi Prakash Singh, Manoj Kumar
Srivastava, Noor Mohammad

Counsel for Respondent :- G.A.

Hon'ble Sanjay Kumar Singh, J.

Order on Bail Application.

Heard learned counsel for the appellant, learned Additional Government Advocate for the State of U.P. and perused the record.

This Criminal appeal under Section 374(2) of Criminal Procedure Code has been preferred by the appellant, namely Phool Chand against the judgment and order dated 27.09.2017 passed by the learned Additional Sessions Judge, Aligarh in CC No. 149 of 2016 (*State vs. Phool Chand*) arising out of Case Crime No. 119 of 2016, under Section 8/20 of NDPS Act, Police Station Quarsi, District Aligarh whereby the learned Judge convicted and sentenced the appellant for the offence under Section 8/20 of NDPS Act, 10 years rigorous imprisonment with fine of Rs 1,00,000/- and in default of payment of fine, six months additional simple imprisonment.

It is submitted by the learned counsel for the appellant that the learned trial court has convicted and sentenced the appellant only on the basis of conjecture and surmises without there being any cogent and credible evidence against the appellant. Learned counsel for the appellant submits that the appellant has been in jail since 06.02.2016. The maximum sentence awarded to the appellant is of 10 years and as per custody certificate dated 13.05.2022, the appellant has actually served 6 years and 3 months including remission out of the total sentence of 10 years. It is also submitted by the learned counsel for the appellant that due to heavy dockets, there is no likelihood of the appeal being heard in near future. Learned counsel for the appellant submitted that since the appellant has undergone half of the

maximum sentence awarded by the trial court, he is entitled to be released on bail in view of the judgment of Hon'ble Supreme Court in **Saudan Singh Vs. State of U.P.**, 2021 SCC OnLine SC 3259, wherein Hon'ble Supreme Court has held that there may be even convicts in custody in cases other than life sentence cases and in those cases again the broad parameter of 50 per cent of the actual sentence undergone can be the basis for grant of bail.

Learned counsel for the appellant has also submitted that Hon'ble Supreme Court in the case **Ramnik Singh Vs. Directorate of Revenue Intelligence**, 2013 SCC OnLine SC 1276 granted bail to the accused under the NDPS Act on completion of half of the sentence. The Supreme Court while granting bail to the accused held as under:

"Shri P.P. Malhotra, learned ASG, would submit that since the matter is under the NDPS Act, the appellant is not entitled to the discretionary relief of this Court in granting bail to the appellant and in particular, in view of Section 37 of the NDPS Act.

We have carefully perused the order so passed by the High Court. We have also seen the custody certificate produced by the appellant. In our opinion, since the appeal is pending before the High Court and the possibility of the appeal is taken up for hearing in the near future is remote, the appellant is entitled for suspension of sentence during the pendency of the appeal before the High Court."

In **Satender Kumar Antil Vs. Central Bureau of Investigation**, 2022 SCC OnLine SC 825 Hon'ble Supreme Court held as under:

"To make it clear, the provision contained in Section 436A of the code would apply to the Special Acts also in the absence of any specific provision. For example, the rigor as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigor, the quicker the adjudication ought to be."

Learned Additional Government Advocate opposed the prayer for bail by contending that prosecution has proved its case beyond reasonable doubt against the appellant, but could not dispute the period of incarceration of the appellant as

mentioned above.

Having heard the submissions of learned counsel for the parties, considering gravity of the offence, detention period of the appellant and the dictum of Hon'ble Supreme Court in the cases mentioned herein above, I find that the appellant has made out a case for grant of bail.

In view of the above without expressing any opinion on merits of the case, let the appellant namely, **Phool Chand**, convicted and sentenced as above, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned during pendency of this criminal appeal.

Fine shall be deposited before the trial court by appellant within a month after release from the jail.

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

Order on Memo of Appeal.

List this case in due course for final hearing.

Order Date :- 29.8.2022

Saurabh