

Court No. - 48

Case :- CRIMINAL APPEAL No. - 7002 of 2011

Appellant :- Manuraj

Respondent :- State of U.P.

Counsel for Appellant :- S.P. Tewari, Pankaj Satsangi

Counsel for Respondent :- Govt. Advocate, Ghan Shyam Das

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Subhash Chandra Sharma, J.

In Re: Criminal Misc. Third Bail Application No.06 of 2022 dated 23.3.2022 filed on behalf of the appellant-Manuraj

We have heard Shri Pankaj Satsangi, learned counsel for the applicant as well as learned A.G.A. for State on the bail application.

Present bail application has been preferred for a direction to release the appellant on bail in S.T. No.86A of 2006 in Case Crime No.397 of 2005 under Section 302 read with Section 34 IPC, PS. Bewar, Distt. Mainpuri.

Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He is languishing in jail since 01.12.2011 and as per the custody certificate dated 13.2.2021 he has already undergone 15 years 4 months 12 days of sentence. He has no other criminal antecedent.

Learned counsel for the appellant has placed reliance on the order dated 19.4.2021 passed by Hon'ble Apex Court in Special Leave to Appeal (Crl.) No(s).2808 of 2021 (Manuraj v. State of U.P.) by which Hon'ble the Apex Court observed that given the long incarceration of the petitioner, the appeal be disposed of within next two months.

The Court has proceeded to examine the record in question and find that after passing of the aforesaid order of Hon'ble the Apex Court, the matter has been listed on several occasions before the Coordinate Bench but due to non-cooperation/non-appearance of the counsel for the appellant the hearing of the appeal could not be ensured. On the matter being taken up on 8.3.2022, the Coordinate Bench has proceeded to pass the following order:-

"The appellant Manuraj, lodged in jail since 01.12.2011 had approached the Apex Court challenging the judgment and order dated 01.12.2020 passed by this Court whereby second bail application filed by him had been rejected. While disposing of the Special Leave Petition filed by the appellant, it was noted by the Apex Court that the learned counsel for the appellant was reluctant to argue the appeal on merit before the High Court. However, looking to the long incarceration of the appellant, it was requested that a date be fixed for disposal of the appeal finally, preferably within a period of next two months.

We may note that this appeal is regularly being listed since 02.06.2021 after the decision of the Apex Court but no counsel has put in appearance to argue.

In the connected appeal, there are three accused. Both the appeals have arisen out of two sessions trials namely Session Trial No.86 of 2006 and Session Trial No.86A of 2006. The appellants in Criminal Appeal No.1872 of 2007 have been convicted in the Session Trial No.86 of 2006 (State Vs. Sukhram and Others) whereas appellant Manuraj in Criminal Appeal No.7002 of 2011 has been convicted in Session Trial No.86-A of 2066 (State Vs. Manuraj).

It seems that the bail application of the appellant Sukhram and Jeetraj S/o Sukhram had been allowed vide order dated 12.01.2009 whereas the bail application of the appellant no.2 Aushan S/o Sukhram was kept for further consideration. Vide order dated 05.05.2009, the bail application of appellant no.2 Aushan Singh had also been rejected. However, an application dated 18.07.2016 had been filed through one Ghan Shyam Das, Advocate on behalf of the complainant wherein it is stated that the appellant no.2 Aushan Singh had been released illegally from jail on 08.07.2016 after executing bail bonds before the District Magistrate, Mainpuri and since then he was out of jail. It was categorically stated therein that there was no bail order of appellant no.2 Aushan Singh. On the said application dated 18.07.2016, the order dated 21.07.2016 was passed by this Court asking the learned A.G.A. to seek instructions to verify the averments made in the affidavit accompanying the said application. Further time was sought by the learned A.G.A. when the matter was taken up on 03.08.2016. However, no reply to the said application has been filed till date.

From the order dated 26.10.2016 in Criminal Appeal No.1872 of 2007, it seems that on the statement of learned counsel for the appellants that the appellant Sukhram had died, the Chief Judicial Magistrate, Mainpuri was directed to verify the factum of death. No report has been received so far.

In the said scenario, it is required that the appellant Manuraj who is in jail shall be intimated through the Chief Judicial Magistrate, Mainpuri that the appeal is being listed for final hearing and he is required to instruct his counsel to argue it on merits. It shall also be intimated that in case he is not able to engage a private counsel, legal aid may be provided to him. However, in case on the next date fixed he remains unrepresented i.e. no counsel appears on his behalf, the Court may appoint an Amicus Curiae to proceed with the hearing of the appeal.

As regards, the three appellants in connected Criminal Appeal No.1872 of 2007, the Chief Judicial Magistrate, Mainpuri is directed to submit a report regarding living status of the appellants and also the whereabouts of the appellant no.2 Aushan S/o Sukhram. The appellants be also intimated about the date fixed in the appeal and that their counsels are not appearing in the matter and they are required to instruct them. It shall also be intimated that in case no one represents the appellants on the next date, the Court may pass adverse orders.

Learned A.G.A. shall also complete his instructions on the issue of release of appellant no.2 Aushan Singh S/o Sukhram which was raised by the complainant in the year 2016.

A comprehensive report shall be submitted by the Chief Judicial Magistrate, Mainpuri within a period of three weeks. Learned A.G.A. shall also seek a report from the concerned jail where the appellant no.2 Aushan Singh S/o Sukhram was lodged after his conviction by the trial court.

Let this matter be posted alongwith the requisite report on 30.03.2022."

Thereafter, the matter was listed on 20.4.2022 and the Court has proceeded to pass the following order:-

"It is indicated in the report dated 21.3.2022 of the Superintendent, District Jail, Mainpuri that the sole appellant Manuraj son of Sukhram has been lodged in the Central Jail, Fatehgarh.

No report has been sent by the Senior Superintendent, Central Jail, Fatehgarh.

Let the appellant Manuraj be intimated through the Senior Superintendent, Central Jail, Fatehgarh about the date fixed in the appeal and that he is required to instruct his counsel to argue the appeal.

It shall be intimated to the appellant that in case, he is not in a position to engage a private counsel, legal aid can be provided to him.

It shall further be intimated that in case, on the next date fixed, he remains unrepresented, i.e. through his counsel to argue the appeal, the Court may appoint an Amicus Curiae to proceed with the hearing of the appeal.

Let this appeal be posted alongwith the connected appeal on the date fixed therein."

Today also learned counsel for the appellant is reluctant to press the appeal on merits and is pressing the third bail application due to long incarceration in the light of the order of Hon'ble the Supreme Court dated 25th February, 2022 in Criminal Appeal No.308/2022 (**Saudan Singh vs. State of UP**) arising out of SLP (Crl) No.4633 of 2021.

Learned counsel for the appellant in support of his submissions has placed reliance on an order of the Supreme Court dated 14.5.2018 passed in Special Leave to Appeal (Crl) No. 1319 of 2018 (**Madan Singh Vs. State of Madhya Pradesh**). The said order of the supreme court reads as under:

"1. We have heard the learned counsels for the parties.

2. Leave granted.

3. Aggrieved by the refusal of the High Court to suspend the sentence against the accused appellant this appeal has been filed.

4. The accused who has been convicted under section 302/34 I.P.C. and sentenced to undergo rigorous imprisonment for life has undergone actual custody for a period of over seven years. The hearing of the appeal pending before the High Court is likely to take some time unless specifically expedited. We are not inclined to pass any such order.

5. Taking into account the period of custody suffered and the time within which the appeal is likely to be disposed of we are of the view that the accused appellant should be released on bail. We order accordingly. Consequently, the appellant is ordered to be released on bail to the satisfaction of the learned Additional Sessions Judge, Susner, District Shajapur, M.P. in connection with Sessions Trial No. 200/2010.

6. The learned Additional Sessions Judge, Susner, District Shajapur, M.P. is free to impose appropriate condition(s) as he deems fit.

7. Consequently, the order of the High Court is set aside and the present appeal is disposed of in the above terms."

Learned counsel for the applicant has further placed reliance on the order of the Supreme Court dated 01.10.2021 passed in Petition for Special Leave to Appeal (Crl.) No.5845/2021 (**Pintu vs. State of U.P.**). The said order of the supreme court reads as under:

"Taking into consideration the fact the the petitioner is reported to be in jail for more than 9 years and 9 months, his Criminal Appeal, pending adjudication before the High

Court of Judicature at Allahabad, is not likely to be taken up for final disposal very soon, which fact could not be controverted by learned Additional Advocate General appearing for the State, we are inclined to grant bail to him.

The petitioner is, therefore, directed to be released on bail, subject to such terms and conditions which the concerned Trial Court shall deem fit and appropriate to impose upon him. The Special Leave Petition is disposed of in the afore stated terms."

Learned counsel for the applicant has also placed reliance on the order of Hon'ble the Supreme Court in **Saudan Singh (Supra)**. The relevant part of the order is reproduced herein below:-

"We have put to learned AAG and the learned counsel for the High Court that a list should be prepared of all cases where the person has served out a sentence of 14 years, is not a repeat offender, and in any case if in these cases at one go bail can be granted and cases remitted for examination under the Uttar Pradesh Prisoners Release on Probation Rules, 1938. In all these cases, there is a high possibility that if these people are released, they may not be even interested in prosecuting their appeals.

The second category of cases can be one where the person has served out more than 10 years of sentence. In these cases also at one go bail can be granted unless there are any extenuating circumstances against him.

We are quite hopeful that the High Court will adopt the aforesaid practice and thus prevent the Supreme Court to be troubled with such matters"

Similar view has also been reiterated by Hon'ble the Apex Court in its judgment in **Brijesh Kumar @ Ramu v. State of U.P.**, Criminal Appeal No.540 of 2022 dated 01.04.2022; **Vipul v. State of U.P.**, Special Leave to Appeal (Crl) No(s).3114/2022 dt.8.4.2022 and **Suleman v. State of U.P.**, Criminal Appeal No.491/2022 dated 25.3.2022 and 9.5.2022.

On the other hand, learned A.G.A. opposed the prayer for bail of the appellant but could not dispute the arguments as advanced by the learned counsel for the appellant.

Considering the rival submissions of the learned counsel for the parties, facts and circumstances of the case and period of incarceration of the appellant, prima-facie, without expressing any opinion on the merits and without prejudice to the right of the appellant to pursue this appeal or pray for remission as per law, we are of the view that the applicant is entitled to be released on bail.

Let the appellant-Manuraj, convicted and sentenced by the Court below in S.T. No.86A of 2006 in Case Crime No.397 of 2005 under Section 302 read with Section 34 IPC, PS. Bewar, Distt. Mainpuri, be released on bail on furnishing personal bond and two sureties each of the like amount to the satisfaction of the concerned Chief Judicial Magistrate, subject to furnishing undertaking that he will co-operate in the hearing of the appeal.

The realization of fine shall remain stayed during the pendency of the appeal.

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

Let this appeal be listed for 'final hearing' in the month of July, 2022.

Order Date :- 19.5.2022

SP/