

Court No. - 42

Case :- CRIMINAL APPEAL No. - 7079 of 2019

Appellant :- Kamesh

Respondent :- State of U.P.

Counsel for Appellant :- Rajiv Lochan Shukla,J.B. Singh

Counsel for Respondent :- G.A.

Hon'ble Arvind Singh Sangwan,J.

Hon'ble Ram Manohar Narayan Mishra,J.

Order on Bail Application

Heard learned counsel for the appellant and learned AGA for the State.

As this appeal arises out of impugned judgement and order dated 24.10.2019 passed by Sessions Judge, Hapur in Session Trial No. 167 of 2016 (State vs. Kamesh), arising out of Case Crime no. 158 of 2015, under Sections 302/34 IPC, P.S. Bahadurgarh, District Hapur, convicting the appellant under Section 302/34 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 50,000/-; the bail application of the appellant is being disposed of by this order.

In this application, the appellant seeks suspension of sentence and grant of bail.

Learned counsel for the appellant argued that as per the allegations made in the F.I.R. registered at the instance of informant Sanjay on 8.8.2015 that he alongwith his father and brother Amit (deceased) were having lunch. Accused Kamesh and Arvind son of Kamesh came to the house and there was some money disputes with Amit. They took Amit alongwith them to their own house and given firearm injury. When his father and wife reached the house of Kamesh, they saw both Kamesh and Arvind were having weapons in the hand and Amit was falling in the earth and died on the spot. Learned counsel submitted that during investigation, empty cartridge, which was recovered on the spot, was sent to Forensic Science Laboratory, Agra and as per report, it did not match with country made pistol recovered from the possession of Kamesh and therefore, he was acquitted of the charge under Section 25 of Arms Act. Learned counsel referred site plan prepared on the spot that

the dead body was found in the road whereas it is the case of the prosecution that appellant has caused gunshot injury inside their own house. It is next argued that both the appellants are in jail for the last eight years and no recovery was affected from the appellant Arvind. It is submitted that it will be matter of final adjudication in the appeal. There is no eye witness of the incident to support the prosecution version except sweeping observations made in the statement of PW-1 that there was money dispute in between Amit and accused persons. No other evidence has come on record with regard to any such dispute. Learned counsel lastly argued that considering the long custody of the appellants i.e. more than 08 years and appeal being related to the year 2019, which is not likely to be listed for final disposal in near future and the appellant having no criminal antecedents to his credit as well as in the light of the judgement passed by Supreme Court in the case of **Saudan Singh vs. State of U.P. in Criminal Appeal No. 308/2022 arising out of SLP (Crl.) No. 4633 of 2021**, he is entitled to be released on bail.

The State counsel opposes the bail application but could not dispute the factual aspects of the matter as well as he is not in a position to dispute the detention period of the appellant.

Considering the totality of the case, in particular, detention period of the appellant and the fact that the appeal may take some time for its final disposal, without further commenting on the merits of the case, this Court is inclined to release the appellant on bail.

Let appellant, **Kamesh**, convicted and sentenced in the above mentioned sessions trial, be released on bail on furnishing a personal bond in the sum of Rs. 50,000/- (Fifty Thousand) and two sureties each in the like amount to the satisfaction of the court concerned.

On acceptance of bail bond and personal bond, the lower court shall transmit photostat copies thereof to this Court for being kept on the record.

It is directed that 50% of the fine awarded in the impugned order shall remain stayed provided the appellants shall deposit remaining 50% of the fine within three months from today.

Order on appeal

List this appeal for final hearing in its due course.

In the meanwhile, Registry to prepare paper book, if not already prepared.

Order Date :- 7.11.2023

Dhirendra/

.

(R.M.N. Mishra, J.) (Arvind Singh Sangwan,J.)