

Court No. - 44

Case :- CRIMINAL APPEAL No. - 7203 of 2019

Appellant :- Kaushal Kishore Alias Baba

Respondent :- State of U.P.

Counsel for Appellant :- Prabhakar Dwivedi

Counsel for Respondent :- G.A.

Hon'ble Arvind Singh Sangwan,J.

Hon'ble Kshitij Shailendra,J.

(Order on Criminal Misc. Bail Application)

1. This is an application seeking suspension of sentence of accused-appellant, Kaushal Kishor alias Baba. Learned counsel for the appellant submits that as per informant-Jameel, the first information report was registered on 5.9.2013. As per first information report, the informant was residing in the house of Harveer on rent and in the same house the applicant was also residing. On 5.9.2013 when the wife of the informant was cooking food, the applicant was having petrol on his hand entered in the room and with intention to kill her poured petrol on her and lit her fire. Thereafter, when she raised cries, the informant and his brother-in-law entered inside the room and with the help of 'razie' douse the fire and took her to hospital.

2. Learned counsel for the appellant submits that the first information report was registered against the applicant because the informant had some doubt about illicit relationship between applicant and his deceased wife. He further submits that the dying declaration, which was recorded by the police was without taking opinion of the doctor. Whether the dying declaration which was recorded without taking opinion of the doctor is admissible and sufficient to convict the appellant is the matter of final argument. Learned counsel for appellant submits that the appellant has no criminal antecedents to his credit. Learned counsel for the appellants submits that the appellant has undergone 10 years and four months of actual sentence and eleven years and three months of total sentence, including remission.

3. 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 not likely to be heard finally in the near future.

4. Learned A.G.A. for the State has, however, opposed the prayer for suspension of sentence but he could not dispute the custody of more than ten years.

5. We have heard learned counsels for the parties. Looking to the facts and circumstances of the case, period of sentence already undergone by the accused-appellant and the fact that the appeal is of the year 2019 and is not likely to be listed for final disposal in near future, we grant 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)***.

6. Let accused-appellant, **Kaushal Kishore Alias Baba**, convicted and sentenced under Sections 302 and 452 I.P.C., vide judgment and order dated 30.9.2019 passed by Additional Sessions Judge-IV, Gautam Budh Nagar in Sessions Trial No. 17 of 2014 (State vs. Kaushal Kishor alias Baba), arising out of Case Crime No. 511 of 2013 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.

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

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

Order On Appeal

List when its turn comes.

Order Date :- 15.2.2024

Faridul