

Court No. - 42

Case :- CRIMINAL APPEAL No. - 2111 of 2015

Appellant :- Vinod Shukla And 9 Others

Respondent :- State of U.P.

Counsel for Appellant :- Shishir Tandon, Brijesh Sahai, Gopal S. Chaturvedi, Indra Kumar Chaturvedi, Vinod Kr Pandey

Counsel for Respondent :- Govt. Advocate, B.K. Srivastava

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Dinesh Pathak, J.

Order on Criminal Misc. Second Bail Application No. 06 of 2019 :-

Heard Shri Indra Kumar Chaturvedi, learned Senior Advocate assisted by Shri Hari Mohan learned Advocate, appearing for the applicant-Rakesh Shukla whose second bail application is being argued on two grounds.

The first ground of seeking bail of the applicant is the period of his incarceration in jail.

Testing the said submission, it is noticeable that this appeal is of the year 2015. Ten accused persons have been convicted for murder of one Chandrama Prasad and causing grievous injuries to four persons.

The first bail application of the applicant has been rejected vide order dated 09.08.2016. Second bail application has been filed in the year 2019 on the plea that hearing of the appeal could not proceed and hence the applicant is entitled to be released on bail.

Testing this submission, relevant is to note that the hearing has prolonged due to pendency of the bail application and moreover, after 09.08.2016 second bail application of co-accused Vinod Shukla was pending till 18.12.2018. The appeal was, thereafter, passed over on the request of the counsel for the appellant/applicant, herein.

Moreover, the paper book is ready under the orders passed by this Court. This Court is ready to hear the appeal on merits. The plea of long incarceration, therefore, is not entertainable.

As far as other submission on the merits seeking bail, it is noticeable that this Court while passing the order dated 09.08.2016 considered the role assigned to the applicant-Rakesh Shukla.

Contention of the learned Senior Counsel for the applicant is that specific role to each assailant had not been assigned in the first information report nor any such role had come up during the investigation. The prosecution witnesses for the first time have assigned specific role to the applicant of causing fatal injuries to the deceased Chandrama Prasad, before the trial court. Submission is that the deposition of the prosecution witnesses is nothing but embellishment and improvement in their initial stand.

This submission of the learned counsel for the applicant is found misconceived, inasmuch as each graphic detail of the occurrence of the incident is not necessarily to be found in the F.I.R. as it cannot be treated as an encyclopedia. The statement of witnesses under Section 161 Cr.P.C. recorded by the Investigating Officer is not a substantive piece of evidence rather its value is to contradict the witnesses during cross-examination in the matter provided by Section 145 of the Indian Evidence Act, 1872 before the trial court.

Much credence cannot be attached to the statement of witnesses before the Investigating Officer. Moreover, all the prosecution evidence can only be examined at the stage of final hearing of the appeal.

We, therefore, do not find any good ground to grant bail to the applicant. The second bail application is, accordingly, **rejected**.

Order on Appeal :-

Paper book is ready.

As prayed by learned senior counsel for the appellants, list this appeal for final hearing/disposal on **23.03.2020**.

Order Date :- 25.2.2020

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