

Court No. - 39

Case :- CRIMINAL APPEAL No. - 7673 of 2019

Appellant :- Amit Yadav And 2 Ors.

Respondent :- State of U.P.

Counsel for Appellant :- Manoj Kumar Srivastava, Deepak Upadhyay, Kamlesh Kumar Tripathi, Ram Bahadur

Counsel for Respondent :- G.A., Sushil Kumar Pal

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Vikram D. Chauhan, J.

Order on Second Bail Application No.14 of 2023

1. This is a specially constituted bench to hear the second bail application.
2. Sri Kamlesh Kumar Tripathi, learned counsel for the applicant/appellants, Sri Manoj Gautam, learned AGA for the State and Sri Sushil Kumar Pal, learned counsel for the informant have been heard on the second bail application.
3. For ready reference, the first bail application rejection order dated 24.3.2022 is quoted herein below:

"Heard Shri Anil Kumar Srivastava, learned Senior Counsel assisted by Shri Manoj Kumar Srivastava, Shri C.L. Chaudhary, learned Amicus Curiae, Shri Mohd. Farooq, Shri Jitendra Singh and Shri Sarvesh Kumar Dubey, learned counsels for the appellant-applicants and Shri Sushil Kumar Pal, learned counsel appearing for the complainant and Shri Vikas Goswami, learned A.G.A. appearing for the State and perused the record.

The instant application has been filed under Section 389 Cr.P.C. to suspend the sentence of conviction and to release the applicants on bail in Sessions Trial No. 239 of 2010, 1596/2010, 1597/2010, 1598/2010, 418/2014, 1600/2010, 1599/2010, under Section 302/149, 364A/149, 201 IPC; 25, 25/4 Arms Act, Police Station Naubasta, District Kanpur Nagar, during pendency of the criminal appeal.

We have gone through the lower court record and the judgment of the trial court with the assistance of learned counsel for the respective parties.

The case is based on circumstantial evidence; as per prosecution case, on 17.08.2009 at about 2:30-3:00 P.M. in the afternoon victim, only son of the complainant, was kidnapped for ransom; trial court on analyzing and examining the evidence has reached the conclusion that the prosecution was able to prove the chain of circumstances beyond reasonable doubt connecting the applicants with the commission of offence; victim was last seen at about 10:00 P.M.; demand of ransom was made; complainant arranged money for ransom and went to the spot as directed; Call Detail Records (CDR) proved the facts that the demand of ransom was made; mobile of the victim was recovered from the accused; school bag and cycle were recovered on the pointing out of the accused persons; victim was strangulated, thereafter, body was disposed of in a river; from the spot, slippers of the victim was recovered and the dead body was recovered at some distance.

Learned counsels for the applicants submit that the applicants are suffering incarceration since

21.08.2009; throughout trial, they were not enlarged on bail.

Per contra, learned counsel appearing for the complainant and learned A.G.A. opposed the prayer for bail and argued that the appellants/applicants have been convicted under Sections 302/149, 364A/149, 201 IPC, as well as, 25, 25/4 Arms Act. It was contended that the incident is quite heinous and the conviction of the appellants/applicants is based on evidence.

Having gone through the record and after giving thoughtful consideration to the submissions made by the learned counsel for the parties, without expressing any opinion on merits of the case, we are not inclined to grant bail to the appellants/applicants. Accordingly their bail applications are rejected."

4. Prima facie, detailed reasoned order was passed to reject the first bail application.

5. Then, it is a fact that Sanjay Yadav/appellant no.3 challenged the above order before the Supreme Court in Special Leave to Appeal (Criminal) No.7548 of 2022. That Special Leave to Appeal was dismissed by order dated 22.8.2022 passed by the Supreme Court.

6. For ready reference, that order is quoted hereinbelow:-

"1 Since Criminal Appeal No 7673 of 2019 is pending before the High Court of Judicature at Allahabad, we permit the petitioner to move the High Court for expeditious disposal of the appeal and the companion appeals, together with a certified copy of this order. In the event that the High Court is unable to dispose of the appeals within a period of one year from the date of the production of the certified copy of this order, the petitioner would be at liberty to apply for bail afresh. This is, however, subject to the petitioner cooperating with the High Court in disposing of the appeals.

2 Subject to the aforesaid, the Special Leave Petition is dismissed.

3 Pending application, if any, stands disposed of."

7. Thereafter, second bail application was filed by Chhote Singh alias Kranti in Criminal Appeal No.461 of 2020 (Chhote Singh Alias Kranti Vs. State of U.P.).

8. Taking note of the above order passed by the Supreme Court, this Court passed the following order:

"This appeal along with companion appeals have been listed before this Court as on the earlier occasion the bail application of the applicant-appellant came to be rejected.

Learned A.G.A. for the State and the learned counsel appearing for the informant has drawn our attention to the order dated 22.8.2022 passed by the Supreme Court in Special Leave to Appeal (Crl.) No(s). 7548 of 2022 (Sanjay Yadav Vs. The State of Uttar Pradesh & Ors.). The order reads thus:

"1 Since Criminal Appeal No 7673 of 2019 is pending before the High Court of Judicature at

Allahabad, we permit the petitioner to move the High Court for expeditious disposal of the appeal and the companion appeals, together with a certified copy of this order. In the event that the High Court is unable to dispose of the appeals within a period of one year from the date of the production of the certified copy of this order, the petitioner would be at liberty to apply for bail afresh. This is, however, subject to the petitioner cooperating with the High Court in disposing of the appeals.

2 Subject to the aforesaid, the Special Leave Petition is dismissed.

3 Pending application, if any, stands disposed of."

The second bail application no. 4 of 2022 has been filed before the expiry of one year. Since this Court cannot hear the appeal on merits accordingly list this appeal along with companion appeals before the Court having jurisdiction in the week commencing 26th September, 2022.

It is informed that the paper book is ready and appeal is ripe for hearing."

9. Paper books have been filed. The matter is thus ripe for hearing. Thus, the matter has been listed amongst others on 12.12.2022, 24.1.2023, 14.2.2023, 20.3.2023 and 25.5.2023. On each of the above noted dates, either none appeared to press the appeal or accommodation was sought by learned counsel for the appellants. On other dates as well, it does not appear that the appeal was pressed with any sincerity.

10. We have offered our anxious consideration to the prayer made. We have heard learned counsel for the parties on the limited issue of consideration on the second bail.

11. Today, plea has been set up that appellants have remained in confinement for almost 14 years. Therefore, prayer has been made to enlarge the appellants on bail, for that reason/circumstance.

12. In view of the fact that the first bail application was rejected by a detailed reasoned order, no other fact has been pressed at this stage. Insofar as period of incarceration suffered is concerned, though it may be true that appellants have remained in confinement for almost 14 years, but it cannot be said with any confidence that the appeal cannot be heard, in reasonable time. The appeal is ripe for hearing and the Court is making every effort to ensure that the appeal is heard at the earliest. Notwithstanding the order of the Supreme Court requesting this Court to hear the appeal at earliest, order sheet (as extracted above) would also bring out that the matter has been listed again and again to ensure justice is delivered

speedily.

13. Largely, the Court can only do this much as offer opportunity to the accused appellants to be heard. However, it remains the obligation of learned counsel for the appellants to press the appeal with sincerity. They cannot be fence sitters to the hearing and only seek opportunity again and again and still let the appeal pending by their acts of deliberate omission. The effort appears to be to some how press the appeal only for the purpose of taking benefit of principle of law that has emerged recently, to the benefit of a person who may have already undergone sentence for a substantial length of time as may allow him to be enlarged on bail, pending the appeal. That principle is based solely on the reality of certain appeals getting no chance of being heard in the near future. Such facts do not arise in the present case.

14. We record in no uncertain terms that the appellants have not availed repeated opportunities of hearing granted to them. Therefore, the litigants' counsel remain responsible for the delay, if any. Demand for justice cannot remain partisan or loaded wholly in favour of a person who may have suffered incarceration, irrespective of the deliberate acts of omission and commission. The Court also cannot forget that the present appellants are serving sentence at the end of a fair trial. They are not undertrials who must be presumed to be innocent till proven guilty.

15. Accordingly, the bail application is **rejected**.

Order on Appeal

16. List the appeal for hearing before regular Bench in the week commencing 20th November, 2023.

Order Date :- 6.10.2023

D. Tamang

(Vikram D. Chauhan,J.) (Saumitra Dayal Singh,J.)