

Court No. - 44

Case :- CRIMINAL APPEAL No. - 10139 of 2022

Appellant :- Ramesh

Respondent :- State of U.P.

Counsel for Appellant :- Jitendra Pal Singh, Pradeep Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Siddhartha Varma, J.

Hon'ble Vipin Chandra Dixit, J.

Ref: Criminal Misc. Suspension of Sentence Application No. 1 of 2022

1. Heard learned counsel for the applicant-appellant, learned A.G.A. for the State and perused the record.
2. The instant application has been filed under Section 389(1) of Cr.P.C. to suspend the sentence of conviction and to release the applicant-appellant on bail in Session Trial No. 194 of 2017 (State Vs. Horilal(deceased) and another), arising out of Case Crime No. 964 of 2016, under Sections 60(2) of Excise Act & 272 I.P.C., Police Station- Kotwali, District - Pilibhit.
3. Contention of the learned counsel for the applicant-appellant is that as per Section 272 of the I.P.C., the article which was recovered was not so done in presence of two independent witnesses. He further states that the prosecution when had produced the documentary evidence there was no mention of the Forensic Science Laboratory Report on the basis of which the conviction had been done. He still further submits that there was no finding with regard to the noxiousness of the adulterated substance. Learned counsel for the applicant further submitted that there was no physical injury caused to anyone in the society on account of the alleged article which was being sold. Learned

counsel for the applicant has further submitted that no question was put to the accused with regard to the Forensic Science Laboratory Report under Section 313 of the Cr.P.C.

4. Learned counsel for the applicant has explained the criminal history of the applicant as was provided by the State and has submitted that in Case Crime No.265 of 2020, under Sections 60(2) of Excise Act & Section 272 I.P.C., the applicant had been bailed out. Subsequently, he has submitted that in Case Crime No.489 of 2017, under Section 60(2) of the Excise Act again the applicant had been bailed out and the third case which was Case Crime No.321 of 2021, under Section 2/3 of the U.P. Gangsters Act again the applicant had been bailed out. Under such circumstances, he submitted that the applicant has no significance criminal history.

5. Learned A.G.A. has opposed the bail application but could not deny the facts that no one had died on account of the article allegedly sold and also that no question under Section 313 of Cr.P.C. was put to the accused with regard to the Forensic Science Laboratory Report.

6. We have perused the judgment of the court below with the assistance of the learned counsel for the parties. We are of the opinion that the sentence awarded by the trial court be kept in abeyance in respect of the applicant and he be enlarged on bail.

7. Consequently, the prayer for bail is granted. The bail application is **allowed**.

8. Without expressing any opinion on the merit of the case, let the applicant- **Ramesh** convicted and sentenced in the aforesaid case,

be released on bail on their furnishing personal bonds with two sureties each in the like amount to the satisfaction of the court concerned.

9. The realization of fine shall remain stayed till the decision of the appeal.

10. 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.

11. Office to inform the concerned Jail Superintendent through Chief Judicial Magistrate concerned to ensure compliance of the order.

Order on Appeal

1. Lower court record has been received.

2. Paper book be prepared.

3. List this case in the month of October, 2025 for final hearing.

Order Date :- 11.4.2025

Radhika

(Vipin Chandra Dixit,J.) (Siddhartha Varma,J.)