

Court No. - 45

Criminal Misc. Suspension of Sentence Application No. 01 of 2024

IN

Case :- CRIMINAL APPEAL No. - 12211 of 2024

Appellant :- Nanhey Lal Alias Nankhu

Respondent :- State of U.P.

Counsel for Appellant :- Apul Misra, Devvrat Misra

Counsel for Respondent :- G.A.

With

Criminal Misc. Suspension of Sentence Application No. 01 of 2024.

IN

Case :- CRIMINAL APPEAL No. - 12199 of 2024

Appellant :- Suresh

Respondent :- State of U.P.

Counsel for Appellant :- Apul Misra, Devvrat Misra

Counsel for Respondent :- G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Sri Apul Mishra learned counsel for the appellant in Criminal Appeal No.12211 of 2022 (Nanhey Lal @ Nankhu Vs. State of U.P.) and Criminal Appeal No.12199 of 2024 (Suresh Vs. State of U.P.), and Sri L.D.Rajbhar, learned AGA-I for the State.
2. The present bail application has been filed on behalf of the appellants Nanhey Lal @ Nankhu and Suresh with a prayer to suspend the sentence and to release them on bail in Sessions Trial No.372 of 2010 (State Vs. Nanhey Lal alias Nankhu and another) arising out of Case Crime No. 1873 of 2009 under Sections 302/34, 307/34 IP.C. and Section 30 of Arms Act, Police Station Tilhar, District Shahjahanpur and the maximum sentence awarded to them is life imprisonment.
3. Submission is, primarily the prosecution story has been rendered wholly doubtful as not less than 7 prosecution witnesses turned hostile at the trial. The conviction has arisen on the testimony of

solitary eye-witness-P.W.8. His testimony has been doubted as that of a chance witness. In the absence of version of P.W.1, the testimony of P.W.8 may not be read to corroborate the prosecution story. Also, it has been submitted, the co-accused Suresh has been assigned the role of exhortation. Referring to the pre-existing dispute with respect to the property it has been suggested that both the appellants have been falsely implicated.

4. On the other hand, learned AGA would submit, direct role assignment has been made to the accused Nanhey Lal-of causing single gun shot injury with his licenced fire arm. At present, there is nothing to doubt that. Therefore, even though certain prosecution witness turned hostile, the entire prosecution story cannot be disbelieved. The presence of P.W. 8 at the place of occurrence is natural. That aspect may be examined further at the time of final hearing.

5. Having heard learned counsel for the parties and having perused the record, correctness of the fact submissions advanced apart, at present it cannot be doubted that the testimony of P.W.8 an eye-witness exists. In that, role assignment of causing single gun shot injury has been attributed to the accused-Nanhe Lal only. It has been corroborated in the autopsy and the F.S.L. report. Then the appellant Nanhe Lal @ Nankhu has remained is confined since 22.11.2024 only.

6. In view of the above, all other submissions being advanced, may be tested at the stage of final hearing of the appeal. Accordingly, the bail application of accused **Nanhey Lal @ Nanku** is **rejected** at this stage.

7. In so far as the appellant Suresh is concerned, he has only been assigned the role of exhortation, keeping in mind the entirety of

facts and circumstances noted above and the motive attributed to Nanhe Lal alias Nankhu, the appellant Suresh is found entitled to bail at this stage.

8. In view of the above, let the appellant **Suresh** convicted and sentenced in the abovementioned 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.

9. As soon as personal and surety bonds are furnished, photocopies of the same are directed to be transmitted to this Court forthwith by the concerned court to be kept on record.

10. Realization of 50% fine shall remain stayed during pendency of present appeal. Remaining 50% of fine shall be deposited by the appellant within a month of his release.

Order on Appeal

11. Office is directed to prepare paper book.

12. List for hearing in due course.

Order Date :- 5.2.2025

S.Ali

(Dr. Gautam Chowdhary, J.) (S.D.Singh, J.)