

Court No. - 44

Case :- CRIMINAL APPEAL No. - 5926 of 2016

Appellant :- Umesh Gosai

Respondent :- State of U.P.

Counsel for Appellant :- Ram Suphal Shukla, Ajay Kumar Pandey, Deena Nath

Counsel for Respondent :- G.A., Narendra Singh

Hon'ble Dr. Kaushal Jayendra Thaker, J.

Hon'ble Ajai Tyagi, J.

Order on Criminal Misc. and Bail Application

1. Shri D.N. Joshi, newly appointed as learned counsel for accused-appellant was conveyed in the morning itself that extended period of incarceration and the judgment of Supreme Court in Criminal Appeal No.308/2022 (**Saudan Singh vs. State of UP**) arising out of SLP (Crl) No.4633 of 2021 cannot be pressed into service as this is subsequent application for enlargement on bail, after the paper book is ready, but counsel is not ready to argue the main matter.

2. The appellant was denied the benefit of being enlarged on bail by a reasoned order. The accused is in jail since 28.10.2010. Looking to the seriousness of the offence, bail was not granted to the accused even during the trial. This was one of the facts which we had pointed out to Shri D.N. Joshi who has substituted the earlier Advocate.

3. The bail application of the accused post conviction was dismissed by reasoned order.

4. The paper book has been prepared long back.

5. The Division Bench headed by Justice Ramesh Sinha while rejecting the bail application of this accused has recorded that he has shot the deceased.

6. On 8.9.2017, the Court had permitted filing of application for bail with a condition that the appellants shall not seek adjournment in final hearing of the matter. On 10.4.2018, time was sought. On 30.11.2018, second bail of Surpat came to be rejected and second bail of Jagpat alias Bachcha, Surpat, Ghanpat alias Ganapat, Akhilesh alias Uma Kant alias Daddu and Dhungan Kevat was also rejected despite that time and again, time is sought for. The third bail application was also rejected on 6.3.2020. The matters for final hearing were to be listed on 31.3.2020 despite that except seeking adjournment on 6.4.2022 again the appellants sought for bail.

7. It would be necessary for this Court to mention that this matter has been listed before this Court as per the roster, this appeal was ordered to be listed in the second week of July 2022.

8. One more aspect which requires to be mentioned in this appeal is that despite the fact that the appeal is listed for hearing, learned counsel do not permit the Court to argue the appeal and they claim only bail.

9. A situation would arise that the judgment of Saudan Singh (supra) is placed press into service in all the matters and the learned Advocate refuses to argue main matter though the paper book is ready. A latter judgment of the Apex Court in **Hariom v State of UP, Petition for Special Leave to Appeal (Crl.) No.4545 of 2022** decided on 18.7.2022 will not permit us to grant bail at this juncture as this is the subsequent bail application. This tendency of filing bail application subsequently despite the fact that earlier orders for prepare all the paper book, this would only add to the pendency as after accused are enlarged on bail. Counsel are reluctant to argue the matters and statistical data of Allahabad High Court shows that

matters of the year 1990 are pending where the accused are on bail, similar would become the situation in latter part if such pendency is not sough out, the pendency would enough come down. In this case counsel was requested to argue the matter even he was convey that this Court may settle with costs as no new grounds are urged but in consisted that judgment of Sudan Singh (supra) be pressed into service and his accused should be enlarged on bail. We deprecate this practice which is deprecated by the Apex Court in Hariom (supra).

10. The only change in the circumstance is change of learned Advocate and is only argue on bail and press the bail on the basis of the judgment of Sudan Singh (supra).

11. In our case, learned counsel for accused after getting the bail application rejected time and again has filed this bail application, therefore, the judgment in Sudan Singh (supra) cannot be made applicable to the facts of the case. A group of matters cannot be made applicable in the facts of the case.

12. The pendency of this bail application adds to the list of pending bail application though this is subsequent bail application for enlargement on bail where no new grounds are alleged except period of incarceration.

13. The main matter could have been heard on merits today itself but the over insistence of counsel to argue the subsequent bail application shows that the counsel is only wanting to argue on bail.

14. The matter is ready for final disposal despite that the counsels in these matters are not ready to make their submissions on merits assailing the conviction but instead are insisting on hearing application for enlargement on accused on bail.

15. We have no other option but to dismiss this application, we

are supported our view by subsequent the judgment of Apex Court in ***Lav Parasher @ Chinu v. State of U.P.*** in **Special Leave to Appeal (Crl.) No.1891 of 2022** decided on 17.05.2022 decided by larger bench, where this practice of learned Advocates only insisting for getting the bail application heard has been deprecated as follows:-

"In the normal course, we would have granted the relief of bail, especially, after the petitioner has undergone a sentence of 12 years. In the facts and circumstances of the case, where the petitioner has not shown interest in arguing the appeal, we are not inclined to interfere with the order passed by the High Court. However, taking into account the fact that the petitioner has undergone incarceration for more than 12 years, the High Court is requested to dispose of the appeal expeditiously not later than a period of 3 months from today. In case, the appeal is not disposed of within the said period, liberty is granted to the petitioner to renew his application for bail."

16. The application for enlargement of the accused on bail, this appeal requires to be listed on **17th of August, 2022** before the Court taking up such matters.

Order Date :- 28.7.2022

A.N. Mishra