

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33409
of 2022

Applicant :- Gulshan Alias Modan Mohan

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Arti Bhatt

Counsel for Opposite Party :- G.A.

Hon'ble Saral Srivastava,J.

Pursuant to the Court's order dated 3.8.2022, Principal Secretary (Law), Government of U.P., Lucknow is present before the Court.

Despite the order dated 03.08.2022 passed by this Court, neither instructions nor record of the case is available.

On the request of Sri Manoj Kumar Dwivedi, learned AGA, the case is adjourned with the cost of Rs.20,000/- which shall be payable to the applicant.

Put up as fresh on 13.08.2022.

The presence of Principal Secretary (Law), Government of U.P., Lucknow is exempted till further orders. However, in the event of non-depositing of cost, Principal Secretary (Law), Government of U.P., Lucknow shall remain present before this Court.

Order Date :- 5.8.2022

Mohit

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Hon'ble Saral Srivastava,J.

Heard learned counsel for the applicant-accused.

In the instant case, no instruction has been received by the learned A.G.A. for the State.

The adjournment has been sought by the learned A.G.A. for the State on the ground that the record of the case is not available, as the file of the case has been gutted in fire.

More than two weeks have passed about the unfortunate incident, and Court has accommodated the State Government and adjourned the cases on their request. For the last two weeks, the Court is not able to function properly for want of assistance from the State as they have not made any appropriate arrangement so that the case may be heard.

The State is the custodian of the record for which counsel for the applicant cannot be blamed, and if record has lost, the State is solely responsible. Being the custodian of the record, it ought to have taken care to maintain the record in such a manner so that in any eventuality, the record of the case may be preserved.

The applicant cannot remain in jail for not getting his bail application heard incessantly on the ground that the State is unable to assist the Court for want of record.

This Court may note that all the Government Advocates, who are posted, are very sincere and Court appreciates their effort for their sincerity, but they are also helpless on account of inaction of State in not acting swiftly in reconstructing the record.

In such view of the fact, let the Principal Secretary (Law), Government of U.P., Lucknow to appear before the Court to explain as to what steps have been taken for reconstruction of record, and if adjournment is being sought in the case on the ground of non-availability of record, who shall compensate the

poor litigant whose personal liberty is at stake as his case is not heard for want of assistance from the State due to which he has to remain incarceration for no fault of him loosing his personal liberty.

Put up day after tomorrow i.e. on **05.08.2022** as fresh.

Order Date :- 3.8.2022

Mohit