

Court No. - 1

Case :- CRIMINAL APPEAL No. - 442 of 2015

Appellant :- Dinesh Verma And Another

Respondent :- State of U.P.

Counsel for Appellant :- Manoj Kumar Misra, Amrendra Kumar, Amresh Kumar, Arshad Hafeez Khan, Arvind Kumar Srivastava, Dinesh Kr. Sharma, Dinesh Kumar, Mohsin Iqbal, Pankaj Verma, Sunil Kumar Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(C. M. Application No. IA/11 of 2024)

1. Heard learned counsel for the appellant/applicant and learned A.G.A. for the State.

2. The first bail application moved by the appellant/ applicant has been dismissed by a Co-ordinate Bench of this Court vide order dated 25.01.2016.

3. The present second bail application has been filed under Section 389 Cr.P.C. by the appellant/applicant, Nanku alias Amar Singh, who has been convicted and sentenced to life imprisonment in Sessions Trial No.370 of 2005 arising out of Case Crime No.200 of 2004, under Sections 302, 201, 506 I.P.C., Police Station Mohammadpur Khala, District Barabanki.

4. The contention of learned counsel for the appellant/applicant is that the appellant/applicant has been falsely implicated in the case. His further

submission is that the present appellant/applicant has been convicted against the weight of evidence. The learned trial court has failed to consider that no credible and cogent evidence is available against the appellant/ applicant for convicting him.

5. Learned counsel for the appellant/applicant has also submitted that four persons were tried, who came to be convicted for the offence under Sections 302, 201 and 506 I.P.C. His next submission is that except the co-accused, Ram Komal and the present appellant/ applicant, the other two co-convicts, namely, Dinesh Verma and Nafadeen alias Sher Bahadur have been enlarged on bail by a Co-ordinate Bench of this Court vide orders dated 24.05.2023 and 20.09.2023 respectively passed in Criminal Appeal Nos.442 of 2015 and 489 of 2015. His further submission is that the present appellant/ applicant has remained in jail for a period of more than ten years, which is inclusive of his detention during trial as well as after conviction. Therefore, the present appellant/ applicant is entitled to be enlarged on bail in the light of judgment of Hon'ble Supreme Court in the case of **Saudan Singh Vs. State of U.P.** reported in **2022 SCC Online SC 697.**

6. His next submission is that the present appellant/ applicant has come to be convicted on the basis of testimonies of P.W.-1, Rishi Kumar and P.W.-2, Saroj Verma, who are brother and wife of the deceased, who are related/interested

witnesses. Their testimonies were not corroborated by any independent witness ; rather P.W.-3, Daya Shankar has turned hostile. Despite this fact, the appellant/ applicant has been convicted. Thus, the impugned judgment is unsustainable and for this reason, the present appellant/ applicant deserves to be enlarged on bail during pendency of this appeal.

7. It is also submitted by learned counsel for the appellant that the appellant/applicant has no criminal history, who is languishing in jail since 21.02.2015. Therefore, the appellant/applicant is entitled to be enlarged on bail and if he is enlarged on bail, he will not misuse the liberty of bail.

8. Per contra, learned A.G.A. for the State has vehemently opposed the prayer for grant of bail by submitting that the appellant/ applicant was named in the first information report. Specific role of the present appellant/ applicant has emerged during trial in the light of cogent and reliable testimonies of P.W.-1, Rishi Kumar and P.W.-2, Saroj Verma, eye-witnesses of this incident. Their testimonies reveal that while one of the co-convicts, Ram Komal beheaded the deceased and took away his head with him, the present appellant/ applicant was armed with a firearm and kept firing into the air to deter other persons to come to rescue of the deceased. Thus, he submits that the present appellant/ applicant had played an active role in commission of this incident and his conduct reveals that he was sharing common

object of unlawful assembly to kill the deceased in a brutal manner which is revealed by the injuries reported on his body in the post-mortem report. Therefore, he submits that the accused-applicant/appellant is not entitled to be enlarged on bail.

9. Having heard the learned counsel for the applicant, learned A.G.A. for the State and upon perusal of record, it transpires that the applicant/appellant is named in the first information report. Specific role of the present appellant/ applicant has emerged during trial in the light of cogent and reliable testimonies of P.W.-1, Rishi Kumar and P.W.-2, Saroj Verma. Their testimonies reveal that while one of the co-convicts, Ram Komal beheaded the deceased and took away his head with him, the present appellant/ applicant was armed with a firearm and kept firing into the air to deter other persons to come to rescue of the deceased. The present appellant/ applicant had played an active role in commission of this incident and his conduct reveals that he was sharing common object of unlawful assembly to kill the deceased in a brutal manner as revealed by the injuries reported on his body in the post-mortem report. The role of the appellant/ applicant is clearly distinguishable from the co-convicts, namely, Dinesh Verma and Nafadeen alias Sher Bahadur, who have been enlarged on bail by a Co-ordinate Bench of this Court vide orders dated 24.05.2023 and 20.09.2023 respectively passed in Criminal Appeal Nos.442 of 2015 and 489 of 2015.

10. It also transpires that the learned trial Court has found testimonies of P.W.-1, Rishi Kumar and P.W.-2, Saroj Vema to be reliable and cogent to convict the present appellant/ applicant, who has been awarded life imprisonment for the offence under Section 302 I.P.C..

11. Thus, having regard to the overall facts and circumstances of this case, the role of the present appellant/ applicant and having regard to the rival submissions made by learned counsel for the parties, but without expressing any opinion on merits of the case, we are of the considered view that the case for bail, at this stage, is not made out.

12. Accordingly, the instant second application for bail is **rejected at this stage.**

13. List this case for hearing in the month of July, 2024.

(A. K. Srivastava-I,J.) (A. R. Masoodi,J.)

Order Date :- 14.5.2024
Mahesh