

Court No. - 46

Case :- CRIMINAL APPEAL No. - 4140 of 2007

Appellant :- Sandeep

Respondent :- State of U.P.

Counsel for Appellant :- K.K. Singh, A.R. Nadiwal, Mahtab Alam, Mohit Kumar, Rajeev Kumar Saini

Counsel for Respondent :- Govt. Advocate, Sumit Goyal

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Mrs. Sadhna Rani (Thakur), J.

Sri Mohit Kumar and Sri Mahtab Alam, two counsels, whose names have been shown in the cause list, have put in appearance on behalf of appellant Sandeep.

The prayer for grant of bail is pressed on the basis of the observations of the Apex Court in the cases of **Suleman vs State of U.P** vide judgement and order dated 09.05.2022 as also in the case of **Saudan Singh vs State of U.P.** in Criminal Appeal no. 308 of 2022 vide judgment and order dated 25.2.2022 and on the plea of long incarceration of the appellant in jail. The period of incarceration of the appellant as stated by the learned Advocate for the appellant is about 15 years.

We may record that after rejection of the first bail application, Sri Mahtab Alam learned Advocate for the appellant had filed the second bail application on 30.4.2014. The matter was listed on different dates in the year 2015 when it was adjourned on the request of the counsels appearing on behalf of the appellant. Sri Mahtab Alam learned Advocate who filed the second bail application in the year 2014 did not appear in the case when it was listed regularly on several dates in the year 2015.

Another second bail application was filed by Sri Mohit Kumar learned Advocate on 2.2.2018 without taking 'no objection' of the previous counsel namely Sri Mahtab Alam, during the pendency of the second bail application filed in the year 2014. After filing of the second bail application in the year 2018 though listing applications have been filed by Sri Mohit Kumar learned Advocate appearing for the appellant but he did not appear in the matter and took adjournment on various dates. Even Sri Mahtab Alam, one of the several Advocates kept on sending illness slips. As a result of it, the matter could not be heard on the second bail application pending since the year 2014 or subsequent second bail application filed in the year 2018.

We may also note that on 2.4.2019 and 7.1.2019, the appeal was adjourned on the request of Sri Mahtab Alam learned Advocate for the appellant.

Lastly, on account of continuous non-appearance of both the counsels namely Sri Mahtab Alam and Sri Mohit Kumar learned Advocates for the appellant Sandeep, by order dated 15.4.2019, an Amicus had been appointed by the Court so as to proceed with the final hearing of the appeal.

The appeal, however, could not be heard after the year 2019 though it was listed.

Noticing the above, we may record that the second bail application of the appellant pending since the year 2014 could not be decided on account of non-cooperation/non-appearance of the counsel appearing for the appellant and both the counsels have remained absent from the scene till the year 2019. Though another second bail application and the listing applications have been filed by the counsels praying for urgent listing for consideration of the bail application. The pendency of the bail application, thus, can be attributed to the fault of the two counsels appearing for the appellant.

Now both the counsels have turned up in the Court today to press the second bail application filed by them; respectively, in the year 2014 and 2018. None of them, however, is ready to argue the appeal for final hearing.

We take strong exception to the attitude of the counsels, in first getting the matter adjourned on one or other ground, or by sending illness slip on repeated dates despite engagement of subsequent counsel, and then pressing the bail application on the ground of long incarceration of the appellant or pendency of the appeal for a long time.

We are constrained to record that the present appeal could not be heard simply on account of non-cooperation of the counsels on repeated dates since the year 2015 onwards, though the paper book was ready and the appeal was ripe for hearing.

However, to honour the decision of the Apex Court in **Suleman vs State of U.P** vide judgement and order dated 09.05.2022 as also in the case of **Saudan Singh vs State of U.P. in Criminal Appeal no.308 of 2022** vide judgment and order dated 25.2.2022 and noticing that the appellant who has suffered for about 15 years of incarceration, cannot be made to further suffer on account of fault of his counsels, we are of the considered view that the appellant may be enlarged on bail, subject to the

condition that, in case, his two counsels who have put in appearance today namely Sri Mahtab Alam and Sri Mohit Kumar do not appear on the next date fixed, adverse order be passed against him.

We may note that the Apex Court in the cases of **Suleman vs State of U.P** vide judgement and order dated 09.05.2022 as also in the case of **Saudan Singh vs State of U.P.** in **Criminal Appeal no.308 of 2022** vide judgment and order dated 25.2.2022 and in **Brijesh Kumar @ Ramu vs State** in **Criminal Appeal No. 540 of 2022** vide order dated 01.04.2022 directed that the cases pending for 10-14 years in appeal in which the bail applications are pending and the appellants are under incarceration for more than 10-14 years, and they are not repeated offenders, the pending bail applications have to be decided. It was further directed that the State is also under obligation to consider for remission of the sentence of the convicts who had suffered 14 years of actual incarceration and 20 years with remission as per its own policy.

The observation of the Apex Court in the judgment and order dated 25.02.2022 in **Saudan Singh vs State of Uttar Pradesh** be noted as under:-

"There may be cases where for whatever reason the advocate may not be present as has been set out in the report of the High Court but if they have already completed 14 years of actual sentence, the State itself should take an appropriate stand and the learned Judge can himself pass appropriate orders to at least examine those cases for release and the absence of the advocate cannot come in the way in such a scenario.

We have put to learned AAG and the learned counsel for the High Court that a list should be prepared of all cases where the person has served out a sentence of 14 years, is not a repeat offender, and in any case if in these cases at one go bail can be granted and cases remitted for examination under the Uttar Pradesh Prisoners Release on Probation Rules, 1938. In all these cases, there is a high possibility that if these people are released, they may not be even interested in prosecuting their appeals.

The second category of cases can be one where the person has served out more than 10 years of sentence. In these cases also at one go bail can be granted unless there are any extenuating circumstances against him.

In **Suleman vs State of U.P** vide order dated 09.05.2022, it was directed as under:-

"What is of concern to us is cases which are pending for 10 years and 14 years in appeal, where bail applications are also pending and some of them are in incarceration even without pending bail applications as they may have been disposed of. On our query, learned counsel appearing for the High Court submits that in single offence cases, the matters are referred for remission after 14 years of actual incarceration and 20 years with remission.

We see no reason why these cases are not dealt with in one go by asking the State Government to take a stand in respect of such cases which are single offence cases and pending for 10 years or more and unless there are special circumstances, all of them can be enlarged on bail. As far as cases which meet the norms of remission, the State Government, irrespective of pendency of the appeal, should be forthwith asked to take a call on the plea of remission. It may also facilitate posting all of the matters at one go and asking the counsels appearing for the convicts whether they would be satisfied with cases being considered for remission or would also like to urge the matter in appeal. This may help in clearing the backlog of some appeals.

We would like a closure to all these matters of bail before the next date as the matters are directed to be taken up in one go. If required these matters can also be dealt with by the Vacation Benches."

Considering the above, in view of the observations of the Apex Court in the order dated 25.02.2022 in case of **Saudan Singh** and order dated 09.05.2022 in **Suleman vs State of U.P.** and there being no dispute that the appellant Sandeep has suffered for about 15 years of incarceration in connection with the case, without expressing any opinion on merits and without prejudice to the right of the appellant to pursue this appeal or praying for remission as per law, we are of the view that the appellant is entitled to be released on bail, subject to the conditions imposed above.

Let the **appellant-Sandeep** convicted and sentenced in Sessions Trial No. 498 of 2003 (State vs. Sandeep and others), under Sections 364, 302, 201 120B IPC, Police Station Kotwali Dehat, Saharanpur be released on bail, on furnishing a personal bond along with two sureties each of the like amount to the satisfaction of the Court concerned, subject to the condition that he shall cooperate in early disposal of the present appeal and shall not take any unnecessary adjournment to delay the disposal of the appeal.

The prayer to stay the realisation of fine is rejected.

On acceptance of bail bonds, the lower court shall transmit photostat copies thereof to this Court for being kept on the record of this appeal.

Order on Appeal

Let this appeal be listed for final hearing/disposal on 17th August, 2022 in the additional cause list.

Order Date :- 20.5.2022

Brijesh