

Reserved on 26.04.2023

Delivered on 09.05.2023

Court No. - 39

Case :- CRIMINAL APPEAL No. - 17 of 2020

Appellant :- Ramchandra Tripathi @ Kallu

Respondent :- State of U.P.

Counsel for Appellant :- Bhuwan Raj, Dharmendra Dhar Dubey, Pradeep Kumar Rai, Suresh Chandra Dwivedi

Counsel for Respondent :- G.A., Abhishek Kumar Yadav

with

Case :- CRIMINAL APPEAL No. - 19 of 2020

Appellant :- Surya Bhan Karwariya

Respondent :- State of U.P.

Counsel for Appellant :- Bhuwan Raj, Dharmendra Dhar Dubey, Suresh Chandra Dwivedi

Counsel for Respondent :- G.A., Abhishek Kumar Yadav

with

Case :- CRIMINAL APPEAL No. - 21 of 2020

Appellant :- Kapil Muni Karwariya

Respondent :- State of U.P.

Counsel for Appellant :- Bhuwan Raj, Abhishek Kumar Yadav, Karuna Shankar Shukla, Suresh Chandra Dwivedi

Counsel for Respondent :- G.A., Abhishek Kumar Yadav

with

Case :- CRIMINAL APPEAL No. - 22 of 2020

Appellant :- Uday Bhan Karwariya

Respondent :- State of U.P.

Counsel for Appellant :- Bhuwan Raj, Dharmendra Dhar Dubey, Pradeep Kumar Rai, Suresh Chandra Dwivedi

Counsel for Respondent :- G.A., Abhishek Kumar Yadav

Hon'ble Salil Kumar Rai, J.

Hon'ble Arun Kumar Singh Deshwal, J.

Order on Bail Applications of appellants in above appeals

1. The bail applications of the appellants in the four appeals arising out of same case crime number and filed against the same judgement and order of Sessions Judge and argument of learned counsel for the appellants in all the four appeals are common, therefore, all bail applications are being decided by a common order.

2. As per the prosecution case an F.I.R. was registered on 13.8.1996 at 20:45 P.M. on the basis of *tehrir* submitted by Sulaki Yadav. As per the contents of above F.I.R., brother of the first informant, namely, Jawahar Yadav @ Panditji, ex-MLA (deceased) left his office (situated at 28/35 Lowder Road Allahabad) for his house in Maruti car bearing number UP 70 E 4379 with Gulab Yadav driving, Panditji sitting on the adjacent seat and Kallan Yadav sitting on the back seat. The first informant followed in his Tata Sumo, driven by Lochan Yadav, with Abhimanyu also sitting with him. When the Maruti car of his brother crossed Palace Cinema at 7:00 P.M., a jeep ahead of it slowed down. Another Maruti van, bearing number UP 70 8070 then overtook and came to the side of Panditji's car. The driver Gulab Yadav tried to drive away after hearing an exhortation, but the jeep, in which Ram Chandra @ Kallu Tripathi was sitting, stopped suddenly ahead of Maruti car of Panditji, causing it to collide with the jeep. Ram Chandra @ Kallu Tripathi, having a rifle, got down from the jeep with some other persons and then Kapil Muni Karwariya, Uday Bhan Karwariya, Surya Bhan Karwariya and their grandfather Maula also came out from the Maruti van, having rifle, AK-47 and other weapons with them. Maula and Ram Chandra exhorted them "*maro sale ko aaj bach kar jane na pave*" and, thereafter, all the persons indiscriminately fired upon Maruti car of Panditji in which first informant's brother Jawahar Yadav @ Panditji, driver Gulab Yadav and Kallan received several bullet injuries and another unknown person also received gun shot injury. It was further stated by the first informant that they also stopped their car and started raising alarm whereupon the accused persons including appellants ran

away. Because of fear shopkeepers closed their shops by shutting down shutters and there was eerie silence. After reaching near the Maruti car of Panditji, the first informant found that his brother (Panditji) and Gulab Yadav (driver) had died in the car while the dead body of another person was lying on the road and Kallan Yadav had also received several injuries. Apart from them, the incident was also seen by one Rajendra Kumar s/o Shyam Lal and several other persons. Kapil Muni Karwariya and his brothers had created so much terror that nobody could dare to say anything against them and these persons had tried to kill his brother earlier also. The first informant and others brought Kallan Yadav to hospital. That incident was seen by the first informant and others in the light of mercury and tube light. After bringing his brother at Swaroop Rani Hospital, the first informant went to lodge the F.I.R. The Police after conducting investigation, submitted charge sheet against the appellants u/s 147, 148, 149, 302, 307, 34 I.P.C. and 7 Criminal Law Amendment Act.

3. Learned Sessions Judge, after considering 18 prosecution witnesses as well as 156 defence witnesses and on perusal of record, convicted all the appellants by judgement and order dated 4.11.2019, u/s 147, 148, 149, 302, 307, 34 I.P.C. and 7 Criminal Law Amendment Act.

4. Heard learned counsel for the appellants, learned counsel for the first informant and learned A.G.A. for the State.

5. Learned counsel for the appellants submitted that learned Sessions Judge, while passing the conviction order, has failed to consider the serious inconsistency in the statements of prosecution witnesses and the prosecution failed to prove its case against the appellants beyond reasonable doubt. Following grounds were raised by learned counsel for the appellants in support of their bail applications:-

(i) The F.I.R. was lodged ante-timed because from the statement of PW-1, PW-6, PW-9 and PW-16, it is established that the F.I.R. was

not in existence until 9:00 P.M. Additionally, the copy of the fax message, sent from the office of S.S.P. to higher officials, shows that information about the incident caused by unknown persons was sent at 12:21 A.M. on 14.8.1996 and similarly *tehrir* writer Madhu Agrawal was not produced by the prosecution but was produced by the defence as DW-14. In his statement he clearly stated that after writing the *tehrir*, he handed it over to PW-1 at 2:00 A.M. This fact further shows that F.I.R. was lodged ante timed;

(ii) Second statement of first informant was recorded almost after a year;

(iii) The Springfield rifle, recovered in the Maruti car of Panditji, was neither sent for forensic examination nor mentioned in the F.I.R. but subsequently after a month, it was claimed by Sudhar Singh and there was no discussion about Sudhar Singh in the F.I.R.;

(iv) The PW-1 and PW-3, being relative of deceased Jawahar Yadav @ Panditji, are interested witnesses and PW-2 is a chance witness, who although not present at the time of incident, was planted by the police. Therefore, testimony of PW-1, PW-2 and PW-3 is not reliable;

(v) Plea of alibi of the appellants was not considered though they had produced witnesses in support thereof;

(vi) Exhibit-28 which was a letter of Additional District Magistrate for post mortem of the deceased was having interpolation, showing change of date from 14.8.1996 to 13.8.1996;

(vii) Explanation regarding the false implication of the appellants given u/s 313 Cr.P.C. was not considered by the Court below;

(viii) Tata Sumo, in which the first informant claimed to be present at the time of incident, was not shown in the site plan and registration number of the said Tata Sumo was not mentioned in the F.I.R., this shows absence of Tata Sumo at the time of incident resulting presence of PW-1 at the place of incident become doubtful;

(ix) The jeep which was shown in the incident belongs to forest department and its driver clearly deposed before the court below that he had taken the jeep to Civil Lines to get its gear box repaired, therefore, involvement of the aforesaid jeep in the incident in question is itself doubtful;

(x) Appellants are in jail for more than 8 years, therefore, in view of the judgement of the Apex court in *Kushal Singh vs. State of U.P.*, passed in *S.L.P. (Criminal) No. 2356 of 2010*, they may be released on bail during pendency of the present appeals; and

(xi) Lastly, it is submitted that appellants have been suffering from several diseases which require immediate medical treatment from super speciality hospitals, therefore, they are entitled to be released on bail on this ground also.

6. On the other hand, learned counsel for the first informant as well as learned A.G.A. submitted that statement of PW-1 nowhere shows that F.I.R. was not lodged till 9:00 P.M. because he clearly stated that his brother (Panditji) and Gulab Yadav had died on the spot and doctor also told him about the death of Gulab Yadav at 8:30 P.M. and after receiving *tehrir* from Madhu Agrawal, he immediately handed over the same to Darogaji in police station and after an hour Darogaji gave him a copy of chik F.I.R. They further submitted that the alleged fax message is forged. DW-11, DW-12, DW-13 who were the policemen posted in the office of S.S.P., clearly denied of having any copy of aforesaid fax in the office of

S.S.P., therefore, aforesaid fax was nothing but a forged document and Sessions Judge also disbelieved the same in absence of original copy of the same.

7. Learned counsel for the first informant also relied upon the judgement of *Subhash Narainji Laddha vs. State of Maharashtra*, reported in (2006) 12 SCC 545. In that judgement the Apex Court observed that in absence of original document, xerox copy being secondary evidence cannot be relied upon. It was lastly submitted by counsel for the first informant that conduct of the appellants during investigation, thereafter during trial as well as during pendency of the present appeals to delay the proceedings at every stage as well as threatening by one of the appellants, namely, Uday Bhan Karwariya (Criminal Appeal No. 22 of 2020) is itself sufficient to reject their bail applications during pendency of the present appeals.

8. We have considered the arguments advanced by learned counsel for the parties as well as perused the record.

9. After hearing learned counsel for the parties and on perusal of record, we find that so far the argument of learned counsel for the appellants that F.I.R. was lodged ante-timed is not correct because, from the statement of PW-1, it is clear that he has clearly stated that he had handed over the *tehrir* for the incident at 8:30 P.M. to Darogaji and the Police after registering the F.I.R. handed him over a copy of *chick* at 9:00 P.M. Similarly, the statements of PW-6, PW-9 and PW-16 do not support the aforesaid contention of the appellants. Even the fax message, mentioned in the statement of PW-14 which appears to have been sent on 13.8.1996, cannot be relied upon as evidence in absence of original copy thereof and presence of original copy of the aforesaid fax message was clearly denied, even by DW-11, DW-12 and DW-13 who were policemen posted in the office of S.S.P., therefore, the existence of aforesaid fax

message is itself doubtful. Therefore, the statement of PW-14 will not help the appellants as the same is contrary to the evidence on record.

10. So far as the contention of appellants that the second statement of first informant was recorded after much delay is concerned, the same will not help them because first statement of PW-1 was immediately recorded during the investigation and delay in recording the second statement of PW-1 was properly explained by the Investigating Officer himself in his statement before the court below.

11. The contention of appellants that the Springfield rifle, recovered from the Maruti car of Panditji was not sent for forensic examination and the same was claimed by its owner Sudhar Singh after one month is not relevant to the present case, therefore, it does not affect the prosecution story. Next contention of the appellants that PW-1 & PW-3, being relatives of deceased Jawahar Yadav @ Panditji are not reliable being interested witnesses is also unfounded because both of them are eye-witnesses of the incident and being relatives of the deceased Panditji are only interested in the punishment of real culprits, therefore, their testimony cannot be thrown out on the ground that they were relatives of deceased Jawahar Yadav. Even during cross-examination defence could not impeach the testimony of PW-1, PW-2 and PW-3.

12. Next contention of the appellants that the plea of alibi was not considered though they have produced defence witnesses in support thereof is also unfounded because once the incident is proved by the eye-witnesses and the defence could not impeach the credibility of the eye-witnesses during cross-examination, therefore, the plea of alibi cannot be accepted.

13. So far the contention of appellants that their statements u/s 313 Cr.P.C. were not considered by the court below is also unfounded because from the perusal of the impugned judgement, it appears that these

statements were duly considered and defence taken by the appellants in their statement u/s 313 Cr.P.C. was not found plausible.

14. Next contention of the appellants that Exhibit-28 contained interpolations, because the date was changed from 14.8.1996 to 13.8.1996, is also unfounded because Exhibit-28 was issued on the night of 13/14.8.1996, therefore, an error in the date is possible and the same was corrected.

15. The contention of the appellants that Tata Sumo in which PW-1 and PW-3 were shown to be present, but was not shown in the site plan is also not relevant because while preparing the site plan the Investigating Officer prepared the same showing the place of incident and vehicle as well as the assailants involved in the aforesaid incident, therefore, this contention also does not help the appellants.

16. The submission of the appellants that jeep which was shown to be used by appellant Ram Chandra @ Kallu Tripathi belongs to Forest Department and its driver had had stated that he had taken the Jeep in Civil Lines to get its gearbox repaired cannot be accepted because in technical inspection the above statement of the driver of Forest Department was found to be incorrect.

17. Last contention of the appellants that they are in jail for more than eight years and suffering from various diseases are entitled to be released on bail in view of the judgement of *Kushal Singh Vs. State of U.P. (supra)*, cannot be accepted because in the present case, paper book is ready and the matters are ripe for hearing but the appellants refused to argue the appeals on merit and proceeded to argue only bail applications, therefore, above judgement also does not help the appellants and so far as the contention of the appellants regarding suffering from several diseases is concerned that cannot be the sole ground to release the appellants on bail.

18. In view of the above, considering the gravity of offence and evidence on record, we do not find this case fit for bail, therefore, the bail applications of the appellants are **rejected**. As the appellant Uday Bhan Karwariya in Criminal Appeal No. 22 of 2020 is on short-term bail for his treatment in pursuance of the order of this Court dated 12.4.2022 which was extended from time to time, this Court declines to extend the short-term bail of the aforesaid appellant i.e. Uday Bhan Karwariya and directs him to immediately report back to jail authorities on 12.5.2023.

19. Even though the appellants are convicted, even then they have the right to proper treatment, therefore, it is further directed that the jail authorities shall ensure the treatment of appellants as per the jail manual and if required they may be sent to a super speciality hospital for treatment under custody.

20. As the paper book has already been prepared and the matter is ready for hearing, list this case on 22.5.2023 for final hearing.

Order Date :- 9.5.2023

Vandana

Court No. - 39

Case :- CRIMINAL APPEAL No. - 17 of 2020

Appellant :- Ramchandra Tripathi @ Kallu

Respondent :- State of U.P.

Counsel for Appellant :- Bhuwan Raj, Dharmendra Dhar Dubey, Pradeep Kumar Rai, Suresh Chandra Dwivedi

Counsel for Respondent :- G.A., Abhishek Kumar Yadav

Hon'ble Salil Kumar Rai, J.

Hon'ble Arun Kumar Singh Deshwal, J.

Order on Short Term Bail (Parole) Application No. 20 of 2022

1. In the present short-term bail application, the appellant Ramchandra Tripathi @ Kallu has stated that he is a patient of T2 DM, hypertension, cerebral stroke, PIVD c4 c5 and E clppepse & LT c neurology, lumbar level stenosis, lumbar spondylosis, ACS, nSTEr41. Half of the appellant's body (left side) is suffering from paralysis (brain attack), and he is under treatment by orthopaedic and neurological doctors since 2013-14. The appellant is also receiving treatment from various doctors at Swaroop Rani Nehru Medical Hospital, Prayagraj.

2. Appellant was also granted short term bail on 6th September 2022 for 30 days for his treatment. After expiry of aforesaid period, the appellant had surrendered on 7th October 2022.

3. Thereafter, the appellant had filed a parole/short-term bail extension application in which a report was summoned by this Court. Pursuant to the order of this Court a report was submitted stating that AIIMS Raebareli had advised for the treatment of the appellant in AIIMS Delhi. However, despite the reference, the appellant was not sent to AIIMS Delhi for his cataract operation, which is a complicated case as the appellant also has a neurological problem along with heart disease.

4. The report shows that officers have been exchanging letters for the required permission to send the appellant for surgery to a super-specialty hospital such as AIIMS Delhi, but no fruitful exercise has been conducted by the State authorities.

5. In a number of judgements, the Hon'ble Supreme Court has clearly held that convicts are also human and, therefore, deserve humane treatment. In view of this fact, the jail authorities, including I.G. Prisoner U.P., are directed to take appropriate action for the treatment of appellant in a super-specialty hospital like AIIMS Delhi. The Senior Superintendent, Central Jail Naini, Prayagraj shall submit a report to this Court on or before the next date of listing. If the report is not submitted or action is not taken, the Court may be compelled to summon the responsible officer to appear personally in the Court.

Order Date :- 9.5.2023

Vandana