

Court No. - 48

Case :- CRIMINAL APPEAL No. - 2440 of 2020

Appellant :- Parvez Parwaz

Respondent :- State of U.P.

Counsel for Appellant :- Syed Ahmed Faizan, Syed Farman
Ahmad Naqvi (Senior Adv.), Zaheer Asghar

Counsel for Respondent :- G.A., Madan Ji Pandey

Hon'ble Siddhartha Varma, J.

Hon'ble Manish Kumar Nigam, J.

Re: Criminal Misc. Bail Application No. 1 of 2020

Heard learned counsel for the applicant/appellant, learned A.G.A. appearing for the State and perused the record.

The instant application has been filed to release the applicant/appellant on bail in Session Trial No. 192 of 2019, arising out of Case Crime No. 175 of 2018, under Section 376D of I.P.C., Police Station - Rajghat, District - Gorakhpur.

Contention of the learned counsel for the applicant/appellant is that the applicant/appellant is innocent and has been falsely implicated in this case. Learned counsel for the applicant/appellant further stated that the statement of DW-1 and PW-5 the erstwhile Investigating Officer and the subsequent Investigating Officer seen then there was inconsistencies in the site plan. Further it has been argued that the F.I.R. was got lodged by the brother of the victim on the dictation of the victim. It has been further stated that there was inconsistencies in the age as was given by the subsequent Investigating Officer PW-5 and the age as was actually given by the victim. What is more, it has been stated that there is no injury on the person of the victim, the incident occurred in the open place in the month of June at about 10:30 pm. Learned counsel for the appellant thereafter relying upon the judgment of Supreme Court in **Anil Ari vs. State of West Bengal reported in (2009) 11 SCC 363** has submitted that the appellant was 68 years of age and at the time of incident he was around 63 years of age. With regard to the criminal history pointed out by the learned A.G.A., learned counsel for the appellant has stated that with regard to the Case No. 1768 of 1994 a criminal revision being Criminal Revision No. 4525 of 2009 was filed in the High Court and the proceedings were stayed by the order dated 19.11.2009.

In rebuttal, learned AGA has opposed the bail application but could not deny the fact that the applicant/appellant had no noticeable criminal history prior to the incident and also he could not deny the fact that applicant/appellant is around 68 years of age.

We have perused the judgement and records of the lower court with the assistance of the learned counsel for the parties. We are of the opinion that the sentence awarded by the trial court be kept in abeyance in respect of applicant/appellant and the applicant/appellant be enlarged on bail.

Consequently, the prayer for bail is granted. The bail application is **allowed**.

Without expressing any opinion on the merit of the case, let the applicant/appellant, **Parvez Parwaz**, convicted and sentenced in the aforesaid case, be released on bail on his furnishing personal bonds with two sureties each in the like amount to the satisfaction of the court concerned.

The recovery of the fine shall remain stayed till the decision of the appeal.

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

Office to comply with the conditions as have been provided by Hon'ble Supreme Court in the case of **In Re Policy Strategy for Grant of Bail** passed in **SMWP (Criminal) No. 4 of 2021** by order dated 31.01.2023.

Re: Order on Appeal

List this case on **28.07.2023** for final hearing.

Order Date :- 30.5.2023

M.S. Ansari

(Manish Kumar Nigam,J.) (Siddhartha Varma,J.)