HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (Criminal) No. 1670 of 2023

Chamkaur Singh ...Petitioner

Versus

State of Uttarakhand and another ...Respondents

Present:-

Mr. Mani Kumar, Advocate for the petitioner.
Mr. K.S. Bora, D.A.G. for the State.

Hon'ble Ravindra Maithani, J. (Oral)

The petitioner seeks direction that the Criminal Appeal No. 301 of 2019, Sanjeev Kumar Sharma Vs. State of Uttarakhand and another, pending in the court of 1st Additional Sessions Judge, Udham Singh Nagar ("the appeal") be decided expeditiously.

2. Heard learned counsel for the parties and perused the record.

3. Generally directions may not be issued to any court for expeditious disposal of any matter because it all depends upon the pendency of cases, category of cases and various other factors that makes a cause list of the court. But then, in extra ordinary circumstances, the Court may make indulgence to a certain extent..

4. The respondent no.2 is a convict on a complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881. The order sheet of the appeal reveals that the respondent no.2 has been successful in delaying the disposal of the appeal. He has been taking adjournment despite last opportunity having been given. It appears nothing, but misuse of the process of the court.

5. The Court requests the court concerned to hear the appeal on the next date fixed. If for any reason, the appeal is not heard on that date, the matter could be heard on the next date.

6. In the criminal appeals, a convict/appellant should not be given liberty to prolong the hearing even by his absence.

7. In the case of Surya Baksh Singh vs. State of Uttar Pradesh, (2014) 14 SCC 222, the Hon'ble Supreme Court in para 17 observed that **"the criminal justice delivery system is being held to ransom by convicts who have developed the devious and dishonest practice of escaping punishment or sentence by filing appeals, obtaining bail or suspension of sentence and thereafter disappearing beyond the reach of the arms of the law."** Further in para 25, the Hon'ble Supreme Court observed

that **"we reiterate that there is an alarming and sinister increase in instances where convicts have filed appeals apparently with a view to circumvent and escape undergoing the sentences awarded against them. The routine is to file an appeal, apply and get enlarged on bail or get exempted from surrender, and thereafter wilfully to become untraceable or unresponsive."**

8. In the case of Surya Baksh Singh *(supra)*, the Hon'ble Supreme Court followed the principles of law, as laid down in the case of K.S. Panduranga vs. State of Karnataka, (2013) 3 SCC 721. In para 19 of its judgment, Hon'ble Supreme Court observed as follows:-

> **"19.** From the aforesaid decision in Bani Singh [(1996) 4 SCC 720 : 1996 SCC (Cri) 848 : AIR 1996 SC 2439] , the principles that can be culled out are:
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> **19.1.** That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;
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> **19.2.** That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;
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> **19.3.** That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;
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> **19.4.** That it can dispose of the appeal after perusing the record and judgment of the trial court:

> **19.5.** That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and
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> **19.6.** That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

9. It appears that the instant appeal is one such appeal which the respondent no.2 is trying to evade. The Court requests the court below to decide the appeal on day-to-day basis.

10. The writ petition stands disposed of accordingly.

(Ravindra Maithani, J.)
21.12.2023

Jitendra