

Court No. - 64

Case :- CRIMINAL APPEAL No. - 4821 of 2023

Appellant :- Vijay Kumar Gautam

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Suneel Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Siddharth,J.

Heard learned counsel for the appellant and learned A.G.A. for the State.

As per earlier order dated 05.12.2023, the appellant was directed to file separate bail application in this appeal.

Counsel for the appellant has referred to the order of Division Bench of this Court dated 16.11.2021 passed in Criminal Appeal No. 6910 of 2019, which provides as follows:-

"As prayed by counsel for the appellant, let this appeal be listed along with bail application after two months.

In the meanwhile, the appellant would file an application for suspension of sentence under Section 389 Cr.P.C. The application for suspension of sentence is provided and while accepting it, consequence is to grant bail. Invariably, bail application is filed in the pending appeal instead an application for suspension of sentence under Section 389 Cr.P.C. The provisions of Section 389 Cr.P.C is quoted hereunder:-

"389. Suspension of sentence pending the appeal; release of appellant on bail.-(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

[Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:]

[Provided further that in cases where a convicted person is

released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail]

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub- section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced."

The counsel has realized the mistake in moving the bail application instead an application for suspension of sentence.

We find that bail is granted in pending appeal without suspension of sentence whereas if the sentence stands, the convict cannot be released on bail. Thus, to give sanctity to provision of Section 389 Cr.P.C., the Bar is directed to change the practice and accordingly file an application for suspension of sentence with a prayer for bail instead of filing bail application simplicitor.

The procedure aforesaid should be made applicable from 1st January, 2022 with an information to the Bar Association so that onwards application is filed as per law. The aforesaid is required for the reason that despite bail is granted to the accused/appellant(s), the jail authorities are not releasing them unless a specific direction to dispense with the penalty amount is given. It is all happening because execution of sentence is not

suspended.

The reason for moving bail application is not due to default of the Bar Members but an order passed in the judicial side that instead of filing an application for suspension of sentence, bail application should have been filed though the said order is not in consonance to Section 389 Cr.P.C. To make the things in consonance to Section 389 Cr.P.C., this order has been passed and to be complied.

Registry is directed to circulate this order for Bar Members through the Bar Association. It is, however, made clear that all the pending bail applications may not be thrown rather the Bar Members may simultaneously file an application to pray for suspension of sentence also so that pending matters may not be effected in any manner.

List on 17.01.2022 along with the connected criminal appeal."

The appellant has been convicted and sentenced under Sections-7/8 of POCSO Act for undergoing rigorous imprisonment for period of three years and fine of Rs.10,000/-.

Counsel for the appellant submits that he has been falsely implicated in this case. The court below has not properly appreciated the material brought on record and the applicant is already on interim bail.

In view of the above, sentence awarded to the appellant in S.T. No. 408 of 2020 (State vs. Vijay Kumar Gautam) arising out of Case Crime No. 124 of 2020, under Sections- 7/8 of POCSO Act, Police Station- Oonj, District- Bhadohi, shall remain suspended during the pendency of this appeal and he shall be enlarged on bail on furnishing a personal bond and two sureties to the satisfaction of court below.

The applicant shall also deposit 50% of the fine before being released on bail.

As soon as personal and surety bonds are furnished, photocopies of the same are directed to be transmitted to this Court forthwith by the concerned court to be kept on record.

Order Date :- 8.12.2023

Saif