Court No. - 13
Case :- CRIMINAL APPEAL No. - 1572 of 2005
Appellant :- Kamlesh
Respondent :- State of U.P.
Counsel for Appellant :- Md.Shanashad Khan
Counsel for Respondent :- Govt.Advocate

Hon'ble Karunesh Singh Pawar,J.

1.Vakalatnama filed by Shri Mithlesh Singh, learned Advocate on behalf of the appellant is taken on record.

2. Appellant Kamlesh is present. As per report of the CJM, Unnao, the bailable warrants have been executed.

3. Heard learned counsel for the appellant as well as learned A.G.A. for the State.

4. The present appeal under Section 374(2) Cr.P.C. has been filed against the judgment and order dated 26.11.2005. passed by the Learned Additional Sessions Judge, Court No.1, Unnao, in Sessions Trial No.327 of 2001, connected with Sessions Trial No.118 of 2002, arising out of case crime no. 129 of 2001 and case crime no. 132 of 2001 both are relating to Police Station:- Makhi, District:- Unnao, by which he convicted and sentences the appellant under section 147 I.P.C. for 6 months R.I. and fine of Rs 500/- and under section 324 I.P.C. for one year R.I. and fine of is 500/-, with default provisions in each of the offences.

5. Learned counsel for appellant has submitted that he is not pressing the impugned judgment of conviction and he is confining this appeal only to the extent of the order of sentence.

6. It is submitted on behalf of the appellant that a maximum sentence of one year was awarded along with a fine of Rs.1000/ upon the appellant and in default of thereof, the appellant has been directed to further undergo additional imprisonment of three months. He further submits that the incident took place year 2001 i.e. way back 22 years approximately and the appellant has no other criminal history.

7. It is submitted on behalf of the appellant that in view of the aforesaid circumstances, it was mandatory for the trial court to release appellant either under Section 4 of the Probation of Offenders Act or under Section 360 of the Cr.P.C. It is submitted that the trial court is further bound to give special reason, if, it does not want to give benefit to appellant either

under Section 4 of the Probation of Offenders Act or under Section 360 of the Cr.P.C. It is submitted that admittedly, in the instant case, the learned trial court has not given any special reason in the impugned order of sentence for not giving benefit to appellant under Section 4 of the Probation of Offenders Act or under Section 360 of the Cr.P.C. Thus, the impugned order of sentence suffers from serious illegality being violative of section 361 of the Cr.P.C., hence the same cannot be sustained.

8. Learned counsel for appellant further submits that the appellant is not the previous convict and therefore, he is entitled for the benefit of Section 4 of the Probation Offenders Act or Section 360 Cr.P.C. He is ready to furnish bonds prescribed under the said sections. Accordingly, it is submitted that appellant may be released from jail custody after giving them the benefit of Section 4 of the Probation of Offenders Act or under Section 360 Cr.P.C.

9. Learned A.G.A. after going through the judgment could not dispute the fact that special reasons for not giving benefit of Section 360 Cr.P.C. or Section 4 of the Probation of Offenders Act have not been assigned by the learned trial court as is required under Section 361 Cr.P.C.

10. Considering the submissions of learned counsel for the parties, perusal of the order of sentence, it is evident that the trial court has not given any special reasons as prescribed under Section 361 Cr.P.C. or Section 4 of the Probation of Offenders Act, hence, the order suffers from material illegality.

11. The Hon'ble Apex Court in the case of State of ***Karnataka vs. Muddappa [(1999) 5 SCC 732]*** had considered the question as to whether the benefit of Probation of Offenders Act could be extended to an offence under Section 304 Part-II of the I.P.C. and concluded that there is no statutory bar for application of Probation of Offenders Act to an offence under Section 304 Part II, where the maximum punishment is neither death nor imprisonment for life. The relevant para of Muddappa's case (supra) of the judgment is extracted below:-

"2. The learned counsel for the appellant is not in a position to assail the acquittal of the accused under Section 302 IPC, but he vehemently contends that the Court did not bear in mind germane considerations for releasing the accused on probation after convicting him under Section 304 Part II IPC. Whether the benefit of the Probation of Offenders Act could be extended in any particular case depends upon the circumstances of that case. Admittedly, there is no statutory bar for application of the Act to an offence under Section 304 Part II where the maximum punishment is neither death nor imprisonment for life. In that view of the matter and on examining the impugned judgment of the High Court, we find that the

Court did consider the relevant material and then came to the conclusion that the accused should be released on probation by applying the provisions of Section 4 of the Probation of Offenders Act. We see no infirmity with that order to be interfered with by this Court after this length of time, more so when nothing has been pointed out as to whether the accused has, in any way, violated the terms and conditions of allowing him on probation."

12. The same view has been taken by the Hon'ble Supreme Court in the case of ***Mohd. Monir Alam vs. State of Bihar [(2010) 12 SCC 26],*** wherein the benefit of Section 4 of Probation of Offenders Act has been given to the appellant and directed the trial court to release the appellant under Section 4 of Probation of Offenders Act.

13. On due consideration to the provisions of the Probation of Offenders Act and Section 360 Cr.P.C., I am of the opinion that these provisions shall apply in the case of the appellant as the appellant is not the previous convicts.

14. Accordingly, in the peculiar facts of this case, I am of the opinion that in the interest of justice, appellant deserves to be released from the case after giving them the benefit of Section no. 4 of the Probation of Offenders Act. Hence, the trial court is directed to release the appellant as per Section 4 of the Probation of Offenders Act on entering into bond and two sureties to ensure that he will maintain peace and good behaviour for the entire period of probation, failing which, he can be called upon to serve the sentence.

15. So far as the conviction part of the judgment is concerned, since the appellant's counsel has not pressed the appeal to that extent, the conviction of the appellant is upheld and the order of sentence is modified as discussed above.

16. The appeal is ***disposed of*** accordingly.

Order Date :- 14.12.2023
R.C.

Digitally signed by :-
RAM CHANDER YADAV
High Court of Judicature at Allahabad,
Lucknow Bench