

**Court No. - 43**

**Case :-** CRIMINAL APPEAL No. - 6648 of 2019

**Appellant :-** Chandramohan

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Anand Pati Tiwari, Dharmendra Kumar Chaubey, Laxmi Kant Shukla, Rajiv Lochan Shukla, Vijay Pratap Singh

**Counsel for Respondent :-** G.A.

**Hon'ble Ashwani Kumar Mishra, J.**

**Hon'ble Shiv Shanker Prasad, J.**

**Ref:- Criminal Misc. Bail Application No. 01 of 2019**

This bail application is filed in instant appeal by accused appellant Chandramohan, who has been convicted in Sessions Trial No.263 of 2017 (State vs. Sudhir and another), arising out of Case Crime No.416 of 2016 under Sections 302/34, 506 IPC, Police Station Tappal, District Aligarh and sentenced to undergo life imprisonment and fine of Rs.50,000/- under Section 302 IPC; 7 years simple imprisonment and fine of Rs.10,000/- under Section 201 IPC; 6 months simple imprisonment and fine of Rs.5000/- under Section 202 IPC; 7 years simple imprisonment and fine of Rs.10,000/- under Section 420 IPC; 10 years simple imprisonment and fine of Rs.10,000/- under Section 467 IPC, 7 years simple imprisonment and fine of Rs.10,000/- under Section 468 IPC and 2 years simple imprisonment and fine of Rs.5,000/- under Section 471 IPC.

The prosecution version is that a First Information Report came to be lodged as Case Crime No.406 of 2014 by the wife of the accused appellant who alleged that her husband has gone missing and certain private persons were accused on account of a private dispute relating to immovable property. The FIR was lodged on 2.5.2014 at 5.30 p.m. Subsequently, a vehicle was found in a burnt condition having a dead body in it and according to the first informant, it was the accused appellant who was done to death by the accused persons. The investigation continued and ultimately it was found that the accused appellant was at Bangalore with his paramour. This was noticed after a report was lodged by the father of the alleged paramour. The accused appellant was accordingly arrested and it is alleged that in his confessional statement he has disclosed that he murdered a mentally unstable person so as to falsely demonstrate that he had been killed by the person with whom he was maintaining enmity. Ultimately, charge sheet

has been submitted against the accused appellant, his paramour and his brother-in-law and on the basis of evidence adduced during the course of trial the accused appellant has been convicted and sentenced as per above.

An application under Section 389(1) CrPC has been filed on behalf of accused appellant submitting that the confessional statement which is the basis of appellant's conviction cannot be read in evidence and the only recovery at his pointing out is the recovery made after four months of a petrol can which cannot be the sole basis for connecting the accused appellant with the crime. He further submits that there is no ocular testimony of the incident and the prosecution case rests entirely upon circumstantial evidence in which the chain of events has not been joined only to support the hypothesis of guilt on the part of the accused appellant. Argument is that neither the identity of the dead person has been established nor any other evidence has been adduced which may implicate the accused appellant in the alleged offence. Reliance has been placed upon the statement of PW-2 who is the Fire Service Officer and had noticed the burning car first, as per whom it was on account of short circuit that the car apparently caught fire. It has been alleged by the learned counsel for the appellant that since the hearing of the appeal may take sufficiently long as paper books have not been prepared so far and the appellant is incarcerated in jail for a period of more than 7 years, therefore he be enlarged on bail.

Learned AGA, on the other hand, submits that the prosecution has established the guilt of the accused appellant beyond reasonable doubt.

Having considered the respective submissions and upon perusal of materials placed on record; considering the period of incarceration undergone by the appellant as also the fact that this is a case of circumstantial evidence and the argument is that the chain of events is not complete so as to point to the guilt of the accused appellant, without commenting upon merits of the case, we are of the opinion that the appellant is entitled to be released on bail.

Let the accused appellant- Chandramohan, convicted and sentenced vide judgment and order dated 28.09.2019, passed by the Additional District & Sessions Judge/FTC-2 Gautam Budh Nagar in Sessions Trial No.51 of 2015 (State vs. Chandramohan and others), arising out of Case Crime No.406 of 2014 under Sections 302, 201, 202, 420, 467, 468, 471 IPC, Police Station Kasna, District Gautam Budh Nagar, be released on bail in the above case on furnishing personal bond and two sureties each in the like amount to the satisfaction of the concerned Chief

Judicial Magistrate, subject to furnishing undertaking that he will co-operate in the hearing of the appeal.

Fine shall be deposited within six weeks after release of the accused appellant.

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

Office is directed to prepare the paper books within two months and list the appeal for hearing in the month of January, 2023.

**Order Date :- 13.9.2022**

SP