

**Court No. - 42**

**Case :- CRIMINAL APPEAL No. - 5135 of 2019**

**Appellant :-** Liyakat Khan

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

**Counsel for Appellant :-** Adil Jamal, Rakesh Kumar Singh, Shikher Trivedi

**Counsel for Respondent :-** G.A., Kameshwar Singh

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

**Hon'ble Mohd. Azhar Husain Idrisi, J.**

**Ref. Criminal Misc. Application U/S 389(1) Cr.P.C.**

1. We have heard Sri Siddharth Shukla, learned counsel for the appellant, Sri Kameshwar Singh, learned counsel for the informant and learned A.G.A. for the State and perused the materials on record.

2. An application for suspension of sentence and grant of bail has been filed in this appeal on behalf of accused appellant-Liyakat Khan, who has been convicted in Session Trial No.035 of 2017 (State vs. Liyakat Khan) arising out of Case Crime No.221 of 2016, Session Trial No.036 of 2017 (State Vs. Liyakat Khan) arising out of Case Crime No. 222 of 2016 and Sessions Trial No.037 of 2017 (State Vs. Liyakat Khan) arising out of Case Crime No.223 of 2016 under Sections 302, 201 and 411 IPC and 25 and 27 of Arms Act, Police Station Baberu, District Banda and the maximum sentence awarded to him is life imprisonment. The rest of the sentences are lesser sentences.

3. As per the prosecution case, the deceased had gone to irrigate the fields where he was done to death. Subsequently, his burnt body was found in two pieces, next morning. Brother of the deceased has lodged the F.I.R. The prosecution relies upon the

testimony of PW-2 (Hasrat Hussain), who happens to be brother-in-law of the brother of the deceased. It is stated that the witness had come to take his sister and at a distance of 500 meters from his house had gone to ease himself at 11.30, in the night, when he saw the accused returning with a firearm in his hand from the tubewell where the incident occurred.

4. Learned counsel for the appellant submits that the motive alleged by the prosecution is neither convincing nor is the presence of the eye-witness, inspiring, inasmuch as it is highly unlikely that PW-2 would visit to such a far off area at 11.30, in the night. It is then submitted that there was no source of light, and the incident has otherwise occurred in agricultural field. Submission is that the accused-appellant has no criminal history and has not abused the liberty granted to him during trial. He is in jail since 15.07.2019, and since the paper-books have not been prepared, and hearing of appeal may take sufficiently long, as such the accused-appellant be enlarged on bail.

5. Learned A.G.A. for the State as well as learned counsel for the informant, have opposed the prayer made for grant of bail on the ground that the incident is excessively brutal in nature, inasmuch as the deceased has been cut into pieces and his body has been burnt. It is submitted that wad recovered from the dead body has otherwise matched inasmuch as it is used in 12 bore gun which is recovered on the pointing out of accused-appellant.

6. Learned counsel for the appellant submits that there are no independent witnesses to the recovery and the recovery itself is doubtful.

7. Be that as it may, it is admitted that the accused-appellant was on bail during trial and has not abused the liberty granted to him

during trial; he has served about 5 years' incarceration and has no criminal history; the argument with regard to the presence of PW-2 or the existence of source of light, etc. are aspects which would require consideration at the time of hearing of appeal. Since sufficient time may otherwise be consumed in hearing of appeal, as such, without further commenting upon merits of the case, we deem it appropriate to enlarge the appellant on bail.

8. Let the accused appellant-Liyakat Khan 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 Chief Judicial Magistrate concerned, subject to furnishing undertaking that he will co-operate in the hearing of the appeal.

9. Fine imposed by the trial court shall be deposited within six weeks of release of the accused appellant.

10. 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.

11. List this appeal alongwith paper book for 'final hearing' in due course.

**Order Date :- 27.5.2024**

MN/-