

(2012) 01 AHC CK 0312

Allahabad High Court

Case No: Criminal Appeal CR.P.C. No. - 7962 of 2006

Shri Bhawan and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Jan. 20, 2012

Acts Referred:

- Arms Act, 1959 - Section 25
- Penal Code, 1860 (IPC) - Section 302, 34, 506(2)

Hon'ble Judges: Vinod Prasad, J; Surendra Singh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. Appeal was taken up in the revised list.
2. A written notice, which was served on learned counsel for the informant by learned counsel for the appellants, supplied in court today, is taken on record.
3. Heard Sri Arun Kumar Srivastava, Raghuvendra Dwivedi, learned counsel for the appellants and Sri Raghuraj Mishra learned A.G.A. in opposition.
4. The appellants have been convicted in S.T. No. 167 of 2003 and 1127 of 2002 for offences under sections 302/34, 506(2) IPC and 25 Arms Act I.P.C., P.S. Khaga, District Fatehpur and the maximum sentence awarded to them are life imprisonment. The rest of the sentences are lesser sentences and all the sentences have been ordered to run concurrently.
5. It is contended by both the learned counsel for the appellants that so far as appellant No. 2 Santosh is concerned, his bail prayer has to be considered in the first round. He further submitted that bail prayer of appellant No. 1 Shri Bhawan was rejected on 23.3.2010 and his second bail prayer application has been filed. It is further submitted that both the appellants were on bail during the trial, which liberty they had not misused and after their conviction order dated 15.11.2006, they

had remained in jail for more than five years. It is further submitted that there are scanty chance of appeal being heard in near future. He further argued that there was another co-accused Sumer and Raju Lodhi, who were acquitted by the trial Judge by the impugned judgment of conviction and sentence and therefore, witness are not wholly reliable. Role of acquitted accused was identical and once out of four two accused were falsely implicated no reliance can be placed on any of the prosecution witnesses without any distinctive feature.

6. Learned AGA however endeavoured to support the judgment and refuted the arguments.

7. Looking to the above argument and period of detention and the fact that the appeal is not likely to be heard in near future, I consider it appropriate to release the appellants on bail.

8. Let the appellants, namely, Shri Bhawan and Santosh be enlarged on bail on their furnishing a personal bond of Rs. one lac with two sureties each in the like amount to the satisfaction of trial Judge concerned in the above sessions trial for above offences. As soon as personal and surety bonds are furnished, photocopies of the same are directed to be transmitted to this Court forthwith by trial Judge concerned to be kept on the record of this appeal.

9. The appellants are allowed one month time to deposit Rs. 5000/- towards fine and rest of the amount of fine shall remain stayed till the decision of this appeal.