

**(2011) 05 AHC CK 0294**

**Allahabad High Court**

**Case No:** Criminal Appeal No. 2584 of 2011

Naushad and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision:** May 2, 2011

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 323, 354, 376, 506, 511

**Hon'ble Judges:** Naheed Ara Moonis, J

**Bench:** Single Bench

**Final Decision:** Allowed

### **Judgement**

Naheed Ara Moonis, J.

Heard learned Counsel for the Appellants and the learned A.G.A. for the State.

Admit.

Summon the lower court record.

2. A prayer for bail has been made in this criminal appeal, which has been filed against a judgment and order dated 19.4.2011, passed by Additional Sessions Judge, Court No. 11, Meerut in Session Trial No. 1681 of 2008, State v. Naushad and Anr., arising out of case crime No. 385 of 2008, u/s 354 IPC, P.S. Mawana, District Meerut, convicting and sentencing the Appellants u/s 354 IPC for two years rigorous imprisonment with a fine of Rs. 5,000/- each, with default stipulation.

3. It is contended by the learned Counsel for the Appellants that initially a first information report was lodged by the complainant under Sections 323, 376, 511 IPC against three unknown persons. The complicity of the Appellants came into light during investigation, thereafter the charges were framed under Sections 323, 376, 511 IPC.

4. It is further contended that no identification parade was done during investigation. The informant is not an eye witness of the occurrence. The Appellants had been implicated falsely and the charges have not been found true, therefore they were acquitted under Sections 376, 506 IPC and they have been convicted only for the offence u/s 354 IPC for two years. The Appellants are on interim bail. During the trial they remained in jail for thirteen months and more than half of the sentence has been spent by them in jail. There is no likelihood of early hearing of the appeal in near future. In case, they are enlarged on bail he will not misuse the liberty of bail.

5. Per contra the learned AGA opposed the prayer of bail of the Appellants and supported the judgment of the trial court. Having considered the submissions made by the learned Counsel for the Appellants as well as the learned AGA and looking to the facts and circumstances of the case, without expressing any opinion on the merits of the case, the prayer for bail of the Appellant is allowed.

6. Let the Appellants, Naushad and Ashraf, convicted and sentenced in Session Trial No. 1681 of 2008, State v. Naushad and Anr., arising out of case crime No. 385 of 2008, u/s 354 IPC, P.S. Mawana, District Meerut, be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned.

7. In the event of depositing 50% of the fine, the balance 50% amount shall remain stayed.