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Vinod Kumar and Sunderlal Vs. State

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Court : Delhi

Decided On : Mar-20-1985

Reported in : 27(1985)DLT338

Judge : D.K. Kapur and; Sunanda Bhmdare, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 437; Indian Penal Code (IPC), 1860 - Sections 34 and 302

Appeal No. : Criminal Miscellaneous Appeal Nos. 1900 and 1948 of 1984 and Criminal Appeal Nos. 196 and 203 of 198

Appellant : Vinod Kumar and Sunderlal

Respondent : State

Advocate for Pet/Ap. : K.K. Sud,; D.R. Sethi,; Rajiv Chauhan and;

Judgement :

D.K. Kapur, J.

(1) The applicant Sunder Lal and Vinod Kumar, the applicant in another application (No. 1948/84 in Cr. A. 203/1984) before us have been convicted under section 302 read with section 34, Indian Penal Code ., and section 397 Indian Penal Code ., and sentenced to imprisonment for life on the first charge, and to seven years' rigorous imprisonment and a fine of Bs. 500.00 on the second charge

by the Additional Sessions Judge, Delhi. Now both have moved applications for the grant of bail pending the bearing of the appeals.

(2) Learned counsel for the applicants have referred to the judgments of the Supreme Court where new light has been thrown on the question of granting bail in the case of persons convicted for murder to life imprisonment. It has been pointed out in Kashmira Singh v. The State of Punjab, : 1977 CriLJ1746 and Babu Singh and others v. The State of Uttar Pradesh, : 1978 CriLJ651 , that the practice of the court refusing bail or suspension of sentence when persons were undergoing a sentence of life imprisonment needed to be reviewed.

(3) It was also pointed oat that in many cases the appeals remained pending for a long time and no reasonable recompense could be given to persons who served a long period of imprisonment and were then acquitted.

(4) We think that the question of grant of bail in any particular case has to be viewed in the light of the seriousness of the offence and, one of the considerations would be the period for which the person would otherwise be in jail. In this particular case, the two applicants were arrested on 24th July, 1981, and were in custody during the period of trial. Till the judgment of conviction was delivered, they had been in detention for three years and two months. Since then, a further period of six months has expired. In all, they have so far been in detention for three years and eight months. Under the provisions of section 428 of the Criminal Procedure Code, 1973, this period of detention is to be set off against the period of conviction. We have, thereforee, to keep in mind the fact that if the appeal is not heard for a considerable period, then the applicants will have served a very long period which may amount to seven or eight years. This is one consideration we have to keep in view.

(5) The other consideration is that the appeal is an arguable one and cannot be treated as being without force at this stage. Particularly, this is because there are no witnesses, so the conviction has been based mainly on circumstances. Another consideration which is very important is that the two applicants are fairly youngmen being in late teens or under 20 years when arrested. They have been in judicial custody, if they are kept in the company of hardened criminals for this

period of four or five years which the appeal might take, it may be too late to rehabilitate them. Of course, this is only a secondary consideration because the main point is that they have been under detention for a long time and the case is an arguable one.

(6) Seen from this angle, we think that we could release them on bail on conditions similar to those imposed by the Supreme Court in Babu Singh's case aforementioned.

(7) We direct that the applicants will be released on furnishing bail in the sum of Rs. 10,000.00 with one surety in the like sum. The condition on which the bail is granted is that they must maintain good behavior during the period of bail and the prosecution will have the liberty of applying for cancellation of the bail in case this condition is broken. Further, the applicants will report at least once a week at the Police Station on a date to be notified to them. The Police Station may be the Tilak Marg or a Police Station near the place where-the applicants reside. The bail will be furnished to the satisfaction of the trial court. The applications are disposed of.

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