

Order Reserved On:08.11.2024  
Order Delivered On:14.11.2024

**Court No. - 47**

**Case :- CRIMINAL APPEAL No. - 6659 of 2024**

**Appellant :- Irfan Solanki And Another**

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

**Counsel for Appellant :- Imran Ullah, Sr. Advocate, Upendra Upadhyay**

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

**Hon'ble Rajiv Gupta, J.**

**Hon'ble Surendra Singh-I, J.**

**Order on Application for Suspension of Sentence:**

1. Heard Shri G.S. Chaturvedi, learned Senior Advocate assisted by Shri Upendra Upadhyay and Shri Imran Ullah, learned counsel on behalf of the appellants, Shri Manish Goyal, learned Additional Advocate General assisted by Shri A.K. Sand, learned Government Advocate and Shri J.K. Upadhyay, learned AGA-I for the State.

2. The instant criminal appeal has been filed against the judgment and order dated 03.06.2024/07.06.2024 passed by learned Special Judge (M.P./M.L.A.)/Additional Sessions Judge, Court No.11, Kanpur Nagar in Sessions Case No. 98 of 2023 (State Vs. Irfan Solanki and others), arising out of Case Crime No. 127 of 2022, under Sections 147, 436/149, 427/149, 323/149, 506, 504 IPC, Police Station Jajmau, District East (Commissionerate Kanpur Nagar) by which the appellants have been convicted for the offence under Section 147 IPC and awarded the sentence of 1 year rigorous imprisonment and a

fine of Rs.2000/-, under Section 436/149 IPC and awarded the sentence of 7 years rigorous imprisonment and a fine of Rs.20,000/-, under Section 427/149 IPC and awarded the sentence of one year rigorous imprisonment and a fine of Rs.5000/-, under Section 323/149 and awarded the sentence of 6 months rigorous imprisonment and a fine of Rs.500/-, under Section 506 IPC Part-I, and awarded the sentence of one year rigorous imprisonment and a fine of Rs.2000/- and under Section 504 IPC and awarded the sentence of 1 year rigorous imprisonment and a fine of Rs.1000/- with default stipulations. All the sentences have been directed to run concurrently.

3. Learned counsel for the appellants has submitted that the appellants are wholly innocent and have been falsely implicated in the present case due to ulterior motive. He has further submitted that the trial court without appreciating the evidence and material on record in right perspective has recorded the finding of conviction and sentence against the appellants, which is wholly illegal and liable to be set aside.

4. Learned counsel for the appellants has next submitted that the prosecution has miserably failed to prove the case beyond reasonable doubt against the appellants and only on the basis of surmises and conjectures, they have been convicted.

5. Learned counsel for the appellants has next submitted that the prosecution has miserably failed to prove the fact that

who, when and how, lit the fire to the hutment belonging to the first informant. He has further submitted that even according to the prosecution own case, there is no evidence to show that any of the witnesses, examined during the course of trial, had seen the appellants, setting on fire, the hutment belonging to the first informant and thus, the case is based on circumstantial evidence.

6. Learned counsel for the appellants has next submitted that even in the testimony of the witnesses recorded during the course of trial, there are serious embellishments and material omissions, which goes to the root of the case and makes the prosecution story highly doubtful and not worth credence.

7. Learned counsel for the appellants has next submitted that the factum of first informant and his family living in the hutment is highly disputed as from the evidence led during the course of trial, it is evident that there is no electricity connection in the hutment in which the first informant and his family is alleged to reside. Even according to the prosecution own case, the said hutment was in a dilapidated condition while the first informant was having a big ancestral house in Ashrfabad to live in.

8. Learned counsel for the appellants has next submitted that when we go through the evidence of the witnesses in the instant case, we find that their testimony before the trial court is in complete variance to their previous statement recorded under

Section 161 Cr.P.C., which are in the form of material omissions, which goes to the root of the case and makes the prosecution story highly doubtful and not worth credence.

9. Learned counsel for the appellants has next submitted that though none of the prosecution witness has been able to point out in their testimony that it was the appellants, who had set the hutment on fire, however, since their presence was noted at the place of incident, as such, on the basis of suspicion, they have been nominated as an accused in the instant case. Suspicion, howsoever strong may be cannot take the place of proof. He has further submitted that even according to the prosecution own case, the two appellants are residents of the same vicinity and seeing the fire lit at the place of incident, it was quite natural for them to be present at the place along with 40-50 other persons, however, they have been falsely implicated in the instant case without their being any cogent or credible evidence that they were responsible for lighting the fire, which makes the prosecution story doubtful.

10. Learned counsel for the appellants has next submitted that even according to the prosecution own case, P.W.18 Vishnu Kumar Saini, who is the star witness of the incident and on whose testimony, the appellants have been convicted for the offence under Section 436 IPC read with Section 149 IPC, however, when we go through the testimony of the said witness, we find that there are serious omissions and embellishments in

his statements, which goes to the root of the case and makes his testimony highly doubtful.

11. It is further argued that the said witness is neither named in the FIR nor his name has appeared in the previous statement of the first informant or other witnesses, however, his statement has seen light of the day after 45 days of the incident, who as per his own statement was neither interrogated by the Investigating Officer nor questioned about the incident but he himself visited the police station and narrated his version to the police and relying upon his testimony, the trial court has recorded the finding of conviction under Section 436 IPC against the appellants, which is nothing but based on surmises and conjectures and not worth credence.

12. Learned counsel for the appellants has next submitted that the spot inspection leading to the recovery of partially burnt clothes, partially burnt bottles and other partially burnt materials has been shown to be recovered after six days of the incident i.e. on 13.11.2022 for which no plausible explanation has been given by the prosecution, which renders the alleged recovery highly doubtful and not worth credence.

13. Learned counsel for the appellants has next submitted that the maximum sentences awarded to the appellants in the instant case is seven years and the appellants have already undergone about two years of incarceration and there is no chance of appeal being heard in near future, as such, the

appellants are entitled be released on bail.

14. Learned counsel for the appellants has next submitted that the criminal history of the appellants have been explicitly explained in paragraph 7 of the rejoinder affidavit and all the cases are old and stale and some of them have been lodged after the present incident. Appellant no.1 was Member of Legislative Assembly in the year 2007 from Arya Nagar Constituency and in the year 2012, 2017 and 2022 was member of the Legislative Assembly from Shishamau Kanpur Nagar.

15. Learned counsel for the appellants has next submitted that the instant case is based on circumstantial evidence and the link of circumstances pointed out by the prosecution is inconclusive and cannot give rise to the guilt of the appellants.

16. In order to buttress his argument, he has relied upon the following decisions:-

(i) ***Baladin and others Vs. State of U.P.*** (1995 0 Supreme (SC) 83);

(ii) ***Masalti Vs. The State of U.P.*** (1965 0 AIR (SC) 202);

(iii) ***Queen-Empress Vs. Hosh Nak*** (1941 All LJ 416).

17. Per contra, learned A.A.G. could not dispute the aforesaid facts, however, has submitted that from the evidence recorded during the course of trial, the presence of accused-appellants at the place of incident has been cogently

established. Admittedly, the appellants and the first informant were at loggerheads as it is alleged that earlier on 30.05.2022, they had partially demolished the hutment of the first informant and wanted to oust them from the said plot. He has further submitted that from the testimony of the witnesses, it is clear that the appellants were responsible for aggravating the fire, which was lit at the place of incident being their dwelling house and in the backdrop of the said circumstances, they have an active role in the incident in question, as such, they have been rightly convicted.

18. He has next submitted that the appellant nos. 1 and 2 have long criminal history of 17 cases and 7 cases respectively and therefore, they are not entitled to be released on bail.

19. Having considered the rival submissions made by learned counsel for the parties as noted above and taking into consideration the fact that the prosecution in the instant case has miserably failed to prove the fact as to who, how and when had allegedly lit the house of the victim, which circumstance makes the prosecution story highly doubtful. Even when we go through the evidence of several witnesses recorded during the course of trial, we find that there are serious embellishments and material omissions in their testimony, which goes to the root of the case and makes the prosecution story further doubtful. Even the trial court has recorded a finding that there is no eye-witness account of the incident of lighting of fire by the

accused-appellants and the case is based on circumstantial evidence.

20. Going through the evidence led by the prosecution, we find that the link of circumstance led by the prosecution is inconclusive and cannot give rise to the definite inference of the guilt of the appellants. Admittedly, the appellants are the residents of the vicinity where the incident is said to have taken place and merely because the appellants, along with other 50-60 persons were present at the scene of incident, will not conclusively prove the circumstance that they were responsible for lighting the fire. Moreover, the maximum sentences awarded to the appellants is seven years and they have already undergone about two years of incarceration.

21. The Hon'ble Apex Court in a recent decision of ***Bhupatji Sartajji Jabraji Thakor Vs. State of Gujarat*** passed in Special Leave Petition (Crl) Diary No.27298 of 2024 held that there is a fine distinction between sentence imposed by a trial court for a fixed term and sentence of life imprisonment. If a sentence is for a fixed term, ordinarily, the appellate court may exercise its discretion to suspend the operation of the same liberally, unless there are any exceptional circumstance emerging from the record to decline.

22. In the instant case, the sentence is only for a period of seven years and the appellants have already undergone about two years of incarceration and in the backdrop of the



circumstances enumerated in the preceding paragraphs, we are of the opinion that the appellants have made out a case for bail.

23. The prayer for suspension of sentence is accordingly **allowed.**

24. Let the appellants- **Irfan Solanki and Rizwan Solanki** be released on bail in the aforementioned case crime number on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned subject to deposition of 50% amount of fine, if not already deposited.

25. On acceptance of bail bonds, the court below shall transmit the xerox copies thereof to this Court for being kept on record.

26. Office is directed to send a soft copy of this bail order by e-mail to the appellants through the Jail Superintendent, concerned.

### **Order on Appeal**

27. List in due course.

**Order Date :- 14.11.2024**  
Subham