
(2011) 04 AHC CK 0322
In the Allahabad High Court
Case No : Criminal Appeal No. 1157 of 2011

Durgesh Kumar Tripathi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 8
Penal Code, 1860 (IPC) — Section 364

Citation : (2011) 04 AHC CK 0322

Hon'ble Judges : Kant Tripathi, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Shri Kant Tripathi, J.—Heard Mr. V.P. Srivastava, learned senior Counsel for the Appellant and the learned A.G.A. and perused the judgment and order of the lower court.

2. Mr. V.P. Srivastava, the learned senior Counsel for the Appellant submitted that the Appellant was kidnapped by the S.T.F. on 1.9.2008 at about 4.00 P.M. and the Appellant's father lodged an F.I.R. against unknown persons on 1.9.2008 itself at about 10.15 P.M. at police station Khalilabad Kotwali, district Sant Kabir Nagar, on which basis the police registered a case u/s 364 IPC much before the alleged recovery from the Appellant was shown to have been made on 2.9.2008 at about 3.10 P.M., therefore, apparently the present case has been concocted by the S.T.F. to harass the Appellant. The Sessions Judge, taking all these facts into account, enlarged the Appellant on bail who continued on such bail during the trial and never abused the same. Mr. Srivastava further submitted that the Appellant is presently in jail from 21.2.2011 and there is no prospect of the appeal being heard in near future due to heavy dockets. Mr. Srivastava lastly submitted that the Appellant is a student and has no criminal history. It was also submitted that in view of the cross version, the recovery is highly doubtful.

3. In my opinion, prima facie, the aforesaid submissions of the learned Counsel

for the Appellant have substance, therefore, it is just and expedient to exercise the discretion in favour of the Appellant.

4. Moreso, there does not appear to be any reasonable ground to believe that the Appellant will tamper with the witnesses or abscond, if released on bail.

5. Keeping in view the entire facts and circumstances of the case and submissions of the learned Counsel for the Appellant and the learned AGA, the Appellant Durgesh Kumar Tripathi involved in the session trial No. 238 of 2008 arising out of crime No. 2094/2008, u/s 8/21 of the Narcotic Drugs and Psychotropic Substances Act, police station Gorakhnath, district Gorakhpur, is released on bail during the pendency of the appeal, on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned and also subject to the following conditions:

1. The Appellant, if so required, shall attend this Court according to the conditions of the bond executed by him;

2. The Appellant shall not commit any offence similar to the offence of which he has been convicted;

6. In case of breach of any of the above conditions, the bail shall be liable to be cancelled.

7. The realisation of the fine shall remain stayed during pendency of the appeal, provided the Appellant deposits 1/4 of the fine within one month.

8. On acceptance of bail bonds and personal bond, the lower court shall transmit photo state copies thereof to this Court for being kept on the record of this appeal.

9. List the appeal for final hearing in due course.