
(2009) 05 AHC CK 0121

Allahabad High Court (Lucknow Bench)

Case No: None

Rajit Ram Tiwari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 26, 2009

Hon'ble Judges: Ved Pal, J

Final Decision: Dismissed

Judgement

Vedpal, J.

Heard learned counsel for the applicant and learned A.G.A. for the State and perused the record.

The applicant Rajit Ram Tiwari is involved in case Crime No. 245/2008, under Sections 302, 450 I.P.C., Police Station Baldirai, District Sultanpur.

The learned counsel for the applicant, assailing the veracity of the prosecution case and proposed evidence, contended that applicant has been falsely implicated in the case on account of enmity; that prosecution witnesses are not independent and reliable; that the allegations made against the applicant/accused are false, frivolous and vexatious and lack in the material substance; that applicant has nothing to do with the alleged offences; that the applicant is not in a position to temper with the prosecution evidence; that there is no danger of accused absconding or fleeing if released on bail; that the applicant is not named in the FIR and his complicity came in the light in the statements recorded under Section 161 Cr.P.C. and, as such, the applicant deserves bail.

The bail is, however, opposed by the learned A.G.A. by contending that there is specific allegation against the applicant; that eyewitness account is available and the applicant was seen committing the alleged offence by Km. Annu Tiwari and Km. Kushi, the daughters of the deceased Smt. Sunita; that the firearm was also recovered at the instance of the applicant and, as such, the applicant does not deserve bail.

I have carefully considered the respective submissions made by the parties. The offence is of serious nature and eyewitness account of the incident is also available. The considerations which normally weigh with the court in granting bail in nonbailable offence have been explained by Hon"ble Apex Court in State v. Capt. Jagjit Singh, AIR 1962 SC 253 and Gurcharan Singh v. State (Delhi Admn.), AIR 1978 SC 179 which basically are the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case. Recently Hon"ble Apex Court in Gobarbhai Naranbhai Singala Versus State Of Gujarat & Ors.& Jayeshbhai @ Panchabhai Muljibhai Satodiya Versus jayrajsinh Temubha Jadeja & Anr. (Appeal (crl.) 198 of 2008(Arising out of SLP(CRL) No. 6646 of 2005)With Criminal Appeal No. 199 of 2008(Arising out of SLP(CRL) No. 4283 of 2006)decided on 29/12/2008 observed as under:

"This Court in Amarmani Tripathi"s case has held that while considering the application for bail, what is required to be looked is, (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behavior, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail"

Thus while considering prayer for bail, what is required to be taken into account is the above factors and not the detailed examination of the evidence and exhaustive exploration of the merits thereof. Since the trial is still to be held therefore on account of this reason also, it will not be proper for this court at this stage to express any final opinion on the merits of various contentions raised by learned counsel for the rival parties but giving them due consideration and having regard to the facts and circumstances of the present case that eyewitness account of the incident is available, in the light of principle laid down by Hon"ble Apex Court as stated above, I am of the opinion that it is not a fit case for bail at this stage. Bail is therefore refused and application for bail is rejected. However, the trial court is directed to expedite the trial of the case and to decide it as early as possible.