

(2001) 08 AHC CK 0048

Allahabad High Court

Case No: Criminal Miscellaneous Second Bail Application Mo.13174 of 2001

Samar Pal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 9, 2001

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439

Hon'ble Judges: J.C.Gupta, J

Final Decision: Dismissed

Judgement

J.C. Gupta, J.

This is second bail application.

2. Sri Rajesh Pathik learned Counsel for the applicant and the learned A.G.A. for the State have been heard.

3. It was submitted by applicant's counsel that admittedly there was strong enmity between the parties and the circumstances appearing in the case indicate that in all probability the incident occurred in darkness much earlier than alleged by the prosecution in darkness and the applicant has been named due to enmity. As per prosecution case incident occurred at 6 a.m. but the First Information Report was lodged as late as at 12.45 p.m. and this delay occurred on account of maneuvering and consultation. It was pointed out that even as per the own case of prosecution deceased and injured both were carried to Medical College Hospital, Meerut from the place of occurrence and they reached there at 8.40 a.m. Deceased had already died before arrival in the hospital. An information to this effect was sent from the hospital to Meerut Medical College Police Station, which was situated in the premises of Medical College itself. In that information it was disclosed that deceased had died on account of an incident which occurred in the village. This information was conveyed to the hospital authorities by none else but Karan Singh First Informant himself. No name of any assailant was disposed. On this information an

entry was made in G.D. No. 33 at 10a.m. at police station Medical College and soon police reached the hospital and held inquest from 11 a.m. to 12 noon. Significantly Ranvir Singh and Hem Singh were made panches who are alleged to be eyewitnesses of the incident yet they did not disclose name of any assailant. Injured was medically examined at 8.40 a.m. and no visible injury was found on his person and he only complained of pain. He also did not disclose name of assailant. It is significant to note that there is no remark of the doctor who medically examined him that injured was unconscious. First Informant himself was present in hospital when deceased was declared dead and injured was medically examined. Police Station was situated in the premises of Medical College yet neither the first informant nor injured nor any of the alleged eyewitnesses disclosed names of any assailant upto 12.00 noon when inquest was completed nor lodged any report though police station was situated on the same premises. It is only thereafter that the first informant went back to his village and lodged the present F.I.R. at 12.45 p.m. wherein applicant was named. The first informant realizing this difficulty came with a case in the first Information Report that injured became unconscious as soon as he was assaulted which version of his is falsified by the medical report of the injured. This wrong assertion was perhaps made as injured was unable to disclose the names of assailants obviously for the reason that the incident had occurred in darkness and he could not identify the assailants. It was further submitted that it was highly doubtful that Rajiv sustained any injury as no apparent and visible injury was found by the doctor who medically examined him and this further creates a doubt in the correctness of the prosecution version as set up in the First Information Report.

4. In short it was argued that had the incident been witnessed by first informant and other witnesses, there could be no reason of the names of assailants not coming to light before 12.45 p.m. when the F.I.R. is alleged to have been lodged though first informant, injured Rajiv and the two alleged eyewitnesses had ample opportunity to disclose the names of assailants much earlier. It was further submitted that all the witnesses are highly partisan and interested. It was also submitted that applicant's wife is seriously ill.

5. It may not be just and appropriate to make any final expression on the above submissions made by the applicant's counsel as the same may unnecessarily prejudice the mind of the trial Court one way or the other, but having regard to the facts and circumstances of the case and also to the fact that applicant has been in jail for more than eight months, he is admitted to bail.

6. Let the applicant, Sanjarpal involved in Case Crime No.278/2000 under Sections 147/148/149/302/307/504/506 I.P.C., P. S. Garh Mukteshwar district Ghaziabad be enlarged on bail on his executing a personal bond and on furnishing two sureties each in the like amount to the satisfaction of the C.J.M., Ghaziabad.