
(2000) 02 AHC CK 0162

Allahabad High Court

Case No: Criminal Misc. Application No. 870 of 2000

Banajeet Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Feb. 7, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 302, 304A, 307, 308, 323

Citation: (2000) CriLJ 3854 : (2000) 3 RCR(Criminal) 670

Hon'ble Judges: B.K. Rathi, J

Bench: Single Bench

Advocate: S.R. Verma, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.K. Rathi, J.

By means of this petition u/s 482, Cr.P.C. the applicant has requested for permission to file fresh bail bonds in case No. 169 of 1999, State v. Banajeet u/s 304-A, I.P.C. now converted u/s 302, I.P.C, P. S. Akbarpur, district Kanpur Dehat.

2. I have heard Sri S. R. Verma, learned counsel for the applicant and the learned A.G.A.

3. It is contended by the learned counsel for the applicant that the applicant was already released on bail, by the Court for offence u/s 304-A, I.P.C. However, the chargesheet have now been submitted u/s 302, I.P.C. That therefore, the applicant may be permitted to file fresh bail bonds for that offence and he is not required to obtain fresh order for bail. Learned counsel for the applicant has referred to the following cases :

Leading case on the point is Ugrasen Singh v. State of U.P. (1993) 30 All Cri C 531. This is a Division Bench decision and in this case the bail was granted Under Sections 336, 504, 506, 323, 427, I.P.C. The case was converted u/s 308, I.P.C. The accused were permitted to file fresh bail bonds u/s 308, I.P.C. It was observed that the distinction between Sections 323 and 308, I.P.C. can depend upon the allegations, the correctness, which naturally could not be altered and are not on the basis of the alteration vide the report of the police. It was further observed that when a person is once granted bail in respect of particular crime the subsequent change in the matter of reference to the section under the offences though it may be made by the police will remain subject of consideration by the Court.

4. The above leading case on the point was followed in the case of Junaid Alam v. State of U.P. (1995) 32 All Cri C 624 where the accused, who were granted bail for offence under Sections 323, 324, 504 and 506, I.P.C. were permitted to file fresh bail bonds for change of offence u/s 307, I.P.C. as they did not misuse the bail. Similar view was also taken in the case of Daddan Singh v. State of U.P. 1994 UP Cri R 332. In this, case, the bail was granted for offence under Sections 323, 452, 504, 506, I.P.C. triable by the Magistrate on conversion of case u/s 308, I.P.C, the applicants were permitted to file fresh bail bonds. In the case of Radhey Shyam v. State of U.P. (1991) 28 All Cri C 652, the accused were granted bail for offence u/s 324, I.P.C. and were permitted to file fresh bail bonds after the conversion of case u/s 307, I.P.C. In Sumer Chand v. State of U.P. (1999) 2 JIC 402. It was observed that if the accused is granted bail on the same facts, they need not to surrender before the Court and apply for fresh bail in the newly added sections and the furnishing of fresh bail bonds is just and proper.

5. I have considered the law laid down in all these cases carefully but is afraid that none of them is of any help to the applicant. The reason is that the applicant was granted bail for offence u/s 304-A, I.P.C in which the applicant is entitled to the bail as of right u/s 436, Cr. P.C Therefore, where the offence alleged by the prosecution is u/s 304-A, I.P.C, the accused is entitled to the bail without consideration of the facts. Therefore, it can be presumed that while granting bail u/s 304-A, I.P.C. to the applicant, the facts were not considered and he was granted the facility of the bail as he was entitled to same as of right. The bail which was granted without consideration of the facts cannot be extended for offence u/s 302, I.P.C. which is heinous offence. Before granting the bail u/s 302, I.P.C., therefore, the consideration of the facts is necessary and the applicant cannot be permitted to file fresh bail bonds. The petition is therefore, dismissed.