

(1990) 04 AHC CK 0058

Allahabad High Court

Case No: Criminal Misc. Application No. 4367 of 1990

Lateef

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: April 19, 1990**Acts Referred:**

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 307

Citation: (1990) 14 ACR 508**Hon'ble Judges:** S.I. Jafri, J**Bench:** Single Bench**Advocate:** M.A. Qadeer, for the Appellant;**Final Decision:** Disposed Of

Judgement

S.I. Jafri, J.

This application u/s 482 Code of Criminal Procedure filed on behalf of the applicant, impugns the charge-sheet No. 1 of 1990 dated 1-4-90 having been filed by the Police against the applicant and others in Criminal case No. 110 of 1989 u/s 147, 148, 149, 302 and 307 IPC. The aforesaid case was registered against the applicant in case crime No. 110 of 1989 at Police Station Sikandra District Kanpur Dehat at 5.15 P.M. on 12-11-1989.

2. Before embarking on the merit and demerit of the case, it would be useful to give a brief account of the events leading to the registration of the instant case. It is alleged that the applicant alongwith 12 of his companions raided the booth set up at Sarvate Intermediate College, Sikandra and tried to capture it at about 4 P.M. on 22-11-1989 at a time when the polling at the booth was in progress. On being challenged by the Police party headed by the Station Officer of Police Station Sikandra, the accused persons resorted to indiscriminate firing by means of the

fire-arms which they possessed, with the result the Station Officer of Police Station Sikandra sustained gun-shot injuries and he succumbed to his injuries on the spot. The Police party also retaliated by firing at the accused persons and in this shoot out, one Rais Ahmad sustained injuries.

3. I have heard Sri M.A. Qadir, Learned Counsel for the applicant, who has strenuously argued in a bid to bring home the point that the applicant-accused in the instant application has been falsely implicated and resultantly, it has been prayed that the charge-sheet filed against the applicant is liable to be quashed by this Court. I have also heard the Learned Counsel for the State.

4. I have traversed upon each and every fact of the case. Upon a consideration of the facts and circumstances, it transpires that there are allegations which speak of desperate action of grave nature on the part of the accused persons and all those allegations warrant to be tested on the anvil of reliability. This court as a court of record, cannot probe into the conduct of the accused and test the veracity of the facts and circumstances in the case sans the demeanour of the witness which the prosecution may propose to examine or cross-examine at par with the trial court. At this stage, this court is not possessed of *Ithuruels* spear by which it could test the innocence of the accused in the jurisdiction u/s 482 Code of Criminal Procedure. In fact shall this court cannot assume function of the trial court. Upon a consideration, this application merits no interference by this Court and it is liable to be dismissed.

5. An alternative prayer has also been made by the Learned Counsel for the applicant. In the light of this prayer, the Learned Counsel submitted that the applicant has not been attributed having played any first fiddle or assigned any specific role, that co-accused Azad, Shariff, Subodh Kumar and Naresh Katiyar have already been admitted to bail by the Sessions Judge Kanpur Dehat. It is also submitted by the Learned Counsel that co-accused Jan Alam and Mohammad had approached this court by filing an application u/s 482 Code of Criminal Procedure which this court was pleased to dispose of vide order dated 20-2-90 with a direction to the court below to dispose of the bail application of the accused on the date of their surrender itself.

6. In the above conspectus, I may observe that law raises a presumption about the innocence of the accused till the charge framed against him are successfully brought home to the accused. Liberty of a person, whether charged with a criminal offence, is a statutory right guaranteed under Article 21 of the Constitution of India and if a court of law sees such rights being infringed with impunity by reckless and arbitrary acts of the State, it cannot be expected to put on blinkers and adopt, an ostrich policy. If an accused cannot claim the bail as a right, it can claim its expeditious hearing and disposal by the courts. No doubt, the courts are faced with case-load-crisis and have their own constraints in a case being heard and decided expeditiously. These constraints are further aggravated by the fact that the courts have to depend upon the machinery provided by the State. Of all the constraints,

sterling is the want of instructions at the end of State counsel which is the usual feature in the courts of law. In this view of the matter the right of the accused to claim expeditious disposal of his case is pitched against the interest of the state to contest the case against the accused as of right. It is worthwhile to observe that shock, pain and anguish of Judges in a number of pronouncements have failed to make any visible impact on the police hierarchy or the prosecuting agency to activate them. They have developed a recessive tenancy taking the commands of the courts lazily and casually. They have their own predilection for other works than for the proceedings in the courts. The courts are not supposed to wait for the convenience of the State machinery prosecuting a case against the accused. In case the prosecuting agency fails to comply with the directions of the court, the courts are to liberty to proceed with the case against the State Agency. Time has come when the courts can no longer brook the statutory rights of the accused being infringed or trampled upon by the arbitrary or indifferent action of the State machinery. I may emphasise that the fealty of the courts has to be to the constitution of the country and the provisions of law and to uphold the cause of justice and certainly not to the pleasure or whims of the state machinery.

7. I am also constrained to observe that when an accused person surrenders before a court of law, a duty is cast on the court to dispose of the application of the accused person the same day. If the court finds it difficult to dispose of the bail application of the applicant on the same day for want of instructions or for other reasons, it should release the applicant on his furnishing personal bonds till such time, the court is able to hear and dispose of the application of the accused applicant. At the risk of being verbose, I may mention that in such cases, the person who is charged with some offence, harbours no intention to escape or to evade the process of law and it is with full trust in the dignity of the courts and the majesty of law that he surrenders before the court for protection. In this view of the matter, the courts are expected to acquit themselves in a manner as to foster the confidence of the people in the efficacy of the courts and majesty of law.

8. I have been constrained to make the above observations to elicit respects by the Police hierarchy to the process of the courts and to make the courts of law alive to the rights of the accused, to the duties cast on them in law and above all to the respects due to be shown for the human dignity. The time has come when the accused need not wait for their cases to be decided after a long tarry.

9. Reverting to the facts of the instant case, I may observe that the applicant has a right to claim expeditious disposal of his bail application by the court below on the day of his surrender and in this view of the matter and the court should dispose of the bail application of the accused the same day if he surrenders before the court below in between 10-30 to 11 A.M. and moves an application for grant of bail. I may mention that if the accused prays for the application to be decided the same day on which he surrenders before the court, it is not within the domain of impossibility for

the court to do. Rather, such actions if adopted by the courts would be one countenanced by law. If the court has some practical difficulty in the disposal of the application for bail the same day, it shall release the applicant on his furnishing personal bond till such time the court is able to hear and dispose of finally the bail application of the applicant. However, it is specified that the release of the accused applicant on personal bond shall not entitle him to claim bail as of right. It is also specified that the above line of course shall not be available to the Courts for being adopted in case the accused is arrested and produced before the court by the Police but on application by the accused applicant, the courts shall be under a duty to dispose of the same as expeditiously as possible.

10. The C.J.M./Sessions Judge/Special Judge Kanpur Dehat is directed to dispose of the bail application of the applicant the same day provided the applicant makes it a point to surrender before the court between 10.30 to 11 A.M. on the day of his surrender. If for want of instructions, the court feels difficulty to hear and finally dispose of the application of the applicant, it shall release the applicant on his furnishing personal bond till such time the court is able to take up the application for hearing and finally disposes it of.

11. Subject to the above observations this application is finally disposed of.

12. Let a copy of this order shall be supplied to the Learned Counsel for the applicant on payment of usual charges within two days from today.