

(2006) 08 AHC CK 0249

Allahabad High Court

Case No: Criminal Miscellaneous Bail Application No. 15495 of 2006

Dharam Vir Singh (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 8, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 307

Hon'ble Judges: Ravindra Singh, J

Bench: Single Bench

Advocate: D.N. Wali, Nitin Gupta and Upendra Upadhyay, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Ravindra Singh, J.

Heard Sri D.N. Wali, learned Counsel for the applicant and learned A.G.A. for the State of U.P.

2. The prosecution story, in brief, is that the First Information Report of this incase has been lodged by Sehdev Bhati at Police Station Sikandrabad on 20.11.2005 at 11.05 A.M. in respect of the incident which had occurred on 20.11.2005 about 10.00 A.M. The distance of the Police Station was about 2 Kl.mts from the place of the occurrence. The First Information Report has been lodged against the applicant and four other co-accused persons. It is alleged that the first informant along with his brother Tirath, Pratap patwari, Leelu and Shibbu had gone to temple in Sikandrabad. After doing charity etc. they were going to village Dhandhole by the Santro Car No. U.P. 145-8257, as soon they came at the road after crossing the bridge of Nizampur, their car was overtaken by Esteem Car No. HR29-N 2597, at the time of over taking, the car of the first informant was colluded by the Esteem car by getting side. Consequently the car of the first informant was stopped and Esteem car was also stopped. The applicant and other co-accused came out from the

Esteem car, in the mean time one co-accused Suresh and one unknown person armed with fire arm also came there on a motorcycle Pulsar and they discharged the shots indiscriminately towards the car of the first informant. Consequently Pratap Patwari, Tirath, Leelu and Shibbo received gun shot injuries and died on the spot. The first informant was hiding under the seat. After committing the murder of the deceased the miscreants ran away from the place of the occurrence, one pistol of the miscreant was left there. According to the post-mortem examination report, the deceased Pratap Patwari had received five gun shot wounds of entry and two exit wounds and the deceased Leelu had received four gun shot wound of entries and two exit wounds and the deceased Shiv Kumar had received two gun shot wound of entries and one exit wound.

3. It is contended by the learned Counsel for the applicant that the presence of the first informant at the alleged place of occurrence is highly doubtful because he did not receive any injury whereas three deceased persons who were also sitting in the same car have received several gun shot wound of entries and there is no independent witnesses to support the prosecution story. The witnesses mentioned in the First Information Report are highly interested and partisan. The alleged occurrence had taken place on the roadside and nobody had witnessed the same but after great thought and consultation the First Information Report of this case has been lodged, the First Information Report is also ante timed. It is further contended that the applicant has been falsely implicated in the present case because he had lodged the First Information Report against the first informant Sahdev and his brothers Sunder and Tirath, Shekh son of deceased Pratap Patwari and four others in Case Crime No. 105 of 2004, under Sections 147 148 149 307 and 302 I.P.C., P.S. Kasna, district Bulandshahr in which they had caused injuries on the person of Naresh Bhati, Suberam, Sushil and Vikram but injured Naresh Bhati died subsequently. They had also attacked on a car. It is further contended that in the statement of the First Information and other witnesses the nature of the fire arm has not been specified and the recovered Esteem Car No. HR29 -N 2597 was registered in the name of one Virendra Singh but It was not owned by the applicant and Virendra Singh is not accused in the present case. The statement of the witnesses Tirath Singh was recorded on 27.11.2005 i.e. after seven days of the alleged occurrence, on such delayed statement no reliance can be placed. The prosecution story is false and concocted and highly improbable. The applicant is innocent, he is having no criminal antecedents and nothing incriminating was recovered from his possession or at his pointing. He is an old man aged about 65 years, he has been falsely implicated in the present case only because he has been informant and witness of a case against Sahdev Bhati, Tirath and their other family members, therefore he may be released on bail.

4. In reply to above contention, the learned A.G.A. submits that in the present case three persons have been murdered by the applicant and other co-accused persons. All the three deceased had received fire arm injuries, it is broad day light

occurrence, F.I.R. of this case has been promptly lodged. The applicant and other co-accused persons were having strong motive due to old enmity. The witnesses are natural and the first informant was present at the time of the alleged occurrence, any how he could save his life by hiding himself under a seat. In case the applicant is released on bail, he may tamper with the evidence, therefore he may not be released on bail.

5. Considering the nature of the allegations made against the applicants and the fact that in the present case three persons have been murdered in a broad day light and the role of firing is assigned to the applicant and the F.I.R. was promptly lodged and other circumstances of the case including submissions made by the learned Counsel for the applicant and learned A.3.A. and without expressing any opinion on the merits of the case, the applicant is not entitled for bail. Therefore the prayer for bail is refused.

6. Accordingly, this bail application is rejected.