
Gopal Mishra (In Jail) Vs State of U.P.

Criminal Misc. Bail Application No. 14936 of 2006

Court: Allahabad High Court

Date of Decision: Aug. 2, 2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 161

Hon'ble Judges: Poonam Srivastava, J

Bench: Single Bench

Advocate: Arvind Agrawal and A.B.L. Gaur, for the Appellant; Anurag Pathak and A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Poonam Srivastava, J.

Heard Sri A.B.L. Gaur and Sri Arvind Agarwal, learned Counsel for the applicant, Sri Anurag Pathak Advocate

for the first informant and learned A.G.A. for the State.

2. The occurrence is alleged to have taken place on 22.2.2006 at 10.30 P.M. One person has died in the incident. The father of the deceased

received injuries as well as three passersby on the road have also received pellet injuries. The injury reports are on record.

3. The submission on behalf of the applicant is that it is night occurrence. There was no electricity supply and it was complete dark. In support of

this contention, a certificate from the Electricity Department of the relevant date and time has been placed before me to show that there was no

electricity supply of 33 KV. from 9.00 P.M. up till 10.40 P.M. The electricity supply was resumed only at 22.40 hours. The next argument is that

three passersby who have received pellet injuries, have filed their affidavits stating that they had not seen the accused participating in the crime. It is

argued next that the co-accused Pawan has been granted bail by this Court and also Hari Om was allowed bail by the learned Sessions Judge and,

therefore, the applicants are entitled for bail.

4. Sri Anurag Pathak has disputed each and every arguments of the counsel for the applicant. He has placed the statement of all the witnesses u/s

161 Cr.P.C. who have clearly admitted that there was electric bulb on the road as well as sufficient light of the tube rods from the various houses

situated on the either side of the road and the road was fully lighted. So far the affidavits of the three injured witnesses who were passersby on the

road is concerned, they have not disowned that they had received pellet injuries but only stated that they had not seen and recognized the accused

persons opening fires. In the circumstances, the incident did take place at the relevant date and time which caused the injuries to three passersby

and the affidavits do not help the applicants. It is also argued that the co-accused Pawan has been allowed bail for the reason that in the statement

of the first informant she has stated that Pawan was armed with rifle whereas there was no injury of rifle. The co-accused Hari Om was allowed

bail by the learned Sessions Judge for the reason that he was not assigned any specific role of having armed with fire arm in the first information

report. It was subsequently in the statement u/s 161 Cr.P.C., Hari Om was also said to be armed with Tamancha.

5. After hearing the respective counsel for the parties at length, I do not find it a fit case of parity with the co-accused Pawan and Hari Om. So far

the question that the deceased received injuries by a single shot and the injured by another shot, false implication of some of the accused can not

be ruled out. This can not be ascertained at this stage as to who gave the fatal shot. This can only be ascertained after the evidence is recorded

during the trial. I do not find it a fit case for grant of bail since the applicant along with other co-accused armed with fire arm have been attributed

the role of causing injuries which resulted in the death of the deceased. The presence of the injured witnesses is sufficient to come to a conclusion

that the occurrence did take place and the fire arm injuries were caused at the relevant date and time.

6. In the circumstances, no case for grant of bail is made out. The bail application is rejected at this stage.

7. The learned Sessions Judge, Firozabad is directed to expedite and conclude the trial as expeditiously as possible, preferably within a period of

six months from the date, a certified copy of this order is produced before him without granting undue adjournment to either parties unless and until

compelling circumstances arise to do so.