

(2008) 03 AHC CK 0239

Allahabad High Court

Case No: None

Horam (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: March 12, 2008**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 308, 364

Hon'ble Judges: Ravindra Singh, J**Bench:** Single Bench

Judgement

Ravindra Singh, J.

The applicant Horam has filed criminal bail application No. 3351 of 2008, the applicant Amit Kumar, Dharmendra Singh alias Mintoo have filed Criminal misc, bail application no, 713 of 2008 and the applicants Sudeep Kumar Yadav and Mithilsh Kumar Yadav have filed criminal misc. bail application No. 3352 of 2008 With a prayer that they may be released on bail in case crime No. 336 of 2007 under Sections 364,308 and 302 I.P.C, P.S. Ajitmal district Auraya. All the bail applications arising out of the same offence therefore, they are being disposed of by a common order.

2. The prosecution story in brief is that the F.I.R. of this case has been lodged by Hirday Naraian Shukla on 11.7.2007 at 2.30 p.m. in respect of the incident which had occurred on 11.7.2007 at 10.30 a.m. distance of the police station was about 10 Km from the alleged place of occurrence. The applicants and co-accused Sudeep Kumar alias Pappu are named in the F.I.R. It is alleged that on 11.1.2007 at about 10.30 a.m. the applicants and the co-accused Sudeep Kumar alias Pappu and Mithilsh Kumar came at the shop of deceased Shishupal on three motorcycles, who were having enmity over a college with the deceased on account of this enmity the deceased was forced at the rifle point by the applicant Horam and the co-accused Sudeep Kumar alias Pappu to ride on the motorcycle, thereafter the applicant Amit Kumar also sit on the same pillion in the back side of the deceased. The deceased

was taken towards Sengar River where the deceased was beaten badly by the applicants and two other co-accused persons by using lathi, danda kicks, fists rifle's butt blow for about 1,1/2 hours. The alleged occurrence was witnessed by Vimlesh Kumar and Shivkesh Kumar, they objected also but they were driven by the applicant Horam and the co-accused Sudeep Kumar, thereafter, the deceased was taken by the applicant and other co-accused persons in serious condition towards Ajitmal but he succumbed to his injuries in the way, the same accused persons was done marpeet with Uma Shanker also who had also sustained injuries , the dead body of the deceased lying in C.H.C. Ajitmal, according to the post mortem examination report of the deceased he had sustained four ante mortem injuries, all the injuries were contusion. The injured Uma Shanker had sustained four injuries caused by blunt object.

3. Heard Sri Dileep Kumar, Sri Rajeev Gupta and Sri Rajshi Gupta, learned Counsel for the applicant, learned A.G.A. for the State of U.P. and Sri Rajeev Lochan Shukla, learned Counsel for the complainant.

4. It is contended by the learned Counsel for the applicant that the applicants are innocent, they have not committed the offence, they have been falsely implicated in the present case due to ill will of the first informant, the prosecution story is not corroborated by the F.I.R. Version because according to the F.I.R. the deceased had succumbed to his injuries on the way to Ajitmal. According to the Chitthi mazroobi he was taken to the C.H.C. Ajitmal as an injured and he was medically examined there, which shows that the alleged incident had taken place in some other manner. One Yaduvendra Singh, maternal uncle of the applicant Horam, was assaulted in the night of 20/21.6.2007 by four miscreants, they started running in order to save their lives, two out of four miscreants have been apprehended by using force but two miscreants successfully escaped, the crowd collected there and caused injury on the person of the deceased and injured Uma Shanker, they were taken to the police station through a tractor the officer in-charge of the police station, was present there, the deceased and the injured were lodged in the lock up and the applicant and Sudeep Kumar was incorporated in the G.D. Report no, 30 at 13,30 dated 11.7.2007, the allegation of abduction of the deceased Shighupal from the shop and other allegation made in the F.I.R. are absolutely and frivolous. In case the deceased was abducted for the purpose of committing the murder, he would have never brought him to the police station in an injured condition. There is no Independent witness to support the prosecution story, therefore, they may be release on bail.

5. In reply to the above contention It if submitted by the learned Counsel for the complainant that the deceased Shishupal forcible abducted by the applicants and other co-accused persons, he was taken towards Sengar River where he was badly beaten, the injured Uma Shanker was also beaten by them. The defence taken by the applicant that the deceased and the injured were Identified by the villagers on 21.6.2007, they had stolen the she buffalo. about 20 days prior the; alleged incident,

is not reliable at all, The F.I.R. has been promptly lodged. There is no inconsistency In the prosecution story, therefore, the bail application moved by the applicants may be rejected.

6. Considering the facts, circumstances of the case and submission made by the learned Counsel for the applicants and the learned A.G.A. and the learned Counsel for the complainant, and without expressing. any opinion on the merits of the case the applicant are not entitled for bail. The prayer for bail is refused. Accordingly above mentioned bail applications are rejected.