

(1997) 02 AHC CK 0123

Allahabad High Court

Case No: Criminal Miscellaneous Bail Cancellation Application No. 6621 of 1995

Mahendra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Feb. 19, 1997

Acts Referred:

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

Citation: (1997) 21 ACR 363 : (1998) 1 RCR(Criminal) 641 : (1998) RD 407

Hon'ble Judges: G.P. Mathur, J

Bench: Single Bench

Advocate: R.B. Sahai, for the Appellant; A.G.A., for the Respondent

Final Decision: Allowed

Judgement

G.P. Mathur, J.

This application has been moved by the complainant for cancellation of bail granted to accused Upendra Sharma (Respondent No. 2) on 13.6.95 by Sri J.P. Agarwal. I Vth Additional District Judge, Deoria.

2. The record shows that an F.I.R. was lodged by Mahendra Singh under Sections 147, 148, 149, 302, 307, 336, 427, 323, 504 and 506, I.P.C. at P.S. Gauri Bazar, District Deoria on 8.1.94, on the basis of which a case was registered as Crime No. 6 of 1994 against 16 persons including Upendra Sharma (Respondent No. 2). It appears that after Upendra Sharma was taken into custody, he moved bail applications and his Second Bail Application No. 439 of 1994 was rejected by a detailed order on 2.4.94 by Sri V.N. Shukla, I Ind Additional Sessions Judge, Deoria. Thereafter Upendra Sharma filed a bail application in this Court on 28.7.1994 which was registered as Criminal Misc. Bail Application No. 6847 of 1994. It may be mentioned here that notice of this bail application was given to the learned State counsel on 4.4.94. The bail application was heard by me on 4.8.94, on which date I directed the learned State counsel to produce the original copy of the post-mortem report and the bail

application was ordered to be listed on 19.8.94 as part-heard. The order-sheet shows that the case was listed on 28.11.94. When the learned State counsel placed before me the report of Senior Medical Officer, Deoria about the injuries sustained by the deceased but the case was passed over as the learned Counsel for the accused had sent illness slip. On 28.4.95 also, it was adjourned on the same ground. Thereafter, the bail application was listed on 1.5.95 and then on 20.5.95 when on the request of learned Counsel for the accused, it was ordered to be listed in the first week of July, 1995. In the meantime, the I Vth Addl. Sessions Judge, Deoria granted bail to Upendra Sharma on 13.6.95. An application was also filed by the accused in the registry on the same day, i.e., on 13.6.95 praying that the bail application No. 6847 of 1994 be dismissed as not pressed. This application was placed in Court on 14.6.95 when it was ordered to be listed with the record on 26.6.95 and on the said date, the following order was passed on the bail application:

On the request of learned Counsel for the applicant, this application is dismissed as withdrawn.

3. The facts mentioned above would show that the I Vth Addl. Sessions Judge, Deoria granted bail to Upendra Sharma accused at a time when his bail application was pending in the High Court. The bail application moved in this Court had been heard on merits on 4.8.94 and it could not be disposed of finally only on account of adjournments which were sought on behalf of accused. In fact on 24.5.95, the case was ordered to be listed in July, 1995 on the request of learned Counsel for the accused. Chapter XVIII, Rule 10 of the High Court Rules provides that every application for bail in a case which is under investigation or which is pending in a lower court shall state the result of the bail application moved before the Sessions Judge and it shall not be entertained unless accompanied by a copy of order passed by him. This shows that an accused is not entitled to pursue his bail application simultaneously in the Court of Session as well as in the High Court. An accused can approach the High Court only after decision of his bail application by the Court of Session. Once an accused has filed an application for bail in the High Court, it is not open to him to file a similar application in the Court of Session till the High Court has disposed of the matter. Therefore, the order dated 13.6.95 deserves to be set aside and the bail granted to the accused is liable to be cancelled.

4. Even on merits, the order dated 13.6.95 passed by Sri J.P. Agarwal, I Vth Addl. Sessions Judge granting bail to Upendra Sharma is wholly unjustified. The order does not contain any reasons except that a co-accused of the case, namely, Guddu had also been granted bail by the same learned Sessions Judge on 9.6.95. According to the case of prosecution, the accused were putting obstruction in the irrigation of complainants field. In the morning of 8.1.94, the complainant Mahendra Singh wanted to irrigate his field from his pumping set through a pipe when the accused came to his house and resorted to firing and brick-batting. Due to the firing done by the accused, the complainant's uncle Jai Nath Singh and grandfather Bunni Ram

received injuries. The complainant party went inside their house and bolted the doors but the accused continued to fire and throw brick-bats. Some of the accused damaged the pumping set and irrigation pipe and one of them instigated to set the house on fire. Meanwhile, some people of the village came and on their intervention, the accused went away. After the accused had left, the complainant hired a taxi for taking his uncle Jai Nath and his grandfather Bunni Ram to District Hospital at Deoria for their treatment. When the taxi had proceeded to some distance, three accused, namely Upendra Sharma, Guddu and Raj Nath came from behind on a Bullet motor cycle which was being driven by Upendra Sharma. They tried to stop the taxi but the driver drove the same at a fast speed. The accused then overtook the taxi and fired due to which the front glass broke and the driver out of fear stopped the vehicle. The three accused then pulled out Bunni Ram from the taxi and each one of them fired upon him due to which he died. The accused then went away on their motor cycle. The post-mortem report shows that Bunni Ram received gunshot injuries. While granting bail to co-accused Guddu, Sri J.P. Agarwal, I Vth Addl. Sessions Judge has mentioned that in the order rejecting the earlier bail application of the accused, there was no reference of a cross case and that Guddu was in custody for about one and a half years. The fact that there was no reference to a cross case in the earlier bail rejection order is wholly irrelevant. Sri J.P. Agarwal was not sitting in appeal over the order passed by Sri V.N. Shukla, I Ind Addl. Sessions Judge on 2.4.94 by which the second bail application of accused Guddu was rejected. The existence of a cross case was not a new circumstance or a new development. If a cross case had been registered, the same must have been done within a short time of registration of the present case. Sri V.N. Shukla had passed a detailed order while rejecting the bail application of Guddu co-accused. Looking to the facts of the case, the delay of one and a half years was not a sufficient ground on which bail could be granted to Guddu co-accused. Even in the case of Guddu, a bail application had been moved in the High Court after rejection of his second bail application on 2.4.94 by I Ind Addl. Sessions Judge, Deoria and during the pendency of the bail application in this Court, he has been granted bail on 9.6.95. I am, therefore, clearly of the opinion that there was absolutely no ground to grant bail to Upendra Sharma in the third bail application which had been moved by him before I Vth Addl. Sessions Judge, Deoria.

5. For the reasons mentioned above, the application for cancellation of bail moved by the complainant is allowed. The bail granted to accused Upendra Sharma by the order dated 13.6.95 of I Vth Addl. Sessions Judge is cancelled. The C.J.M. concerned is directed to take immediate steps for taking the accused Upendra Sharma into custody.

6. Office is directed to send an authenticated copy of this order to C.J.M. Deoria and also to Sri J.P. Agarwal who was posted as I Vth Addl. Sessions Judge, Deoria on 13.6.95 for his information.