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**(1992) 03 AHC CK 0073**

**Allahabad High Court**

**Case No:** Criminal Miscellaneous Bail Application No. 3319 of 1992

Budh Sen

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** March 25, 1992

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 302, 307

**Citation:** (1992) 34 ACR 282

**Hon'ble Judges:** K. Narayan, J

**Bench:** Single Bench

**Advocate:** Y.K. Shukla, for the Appellant;

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**Judgement**

K. Narayan, J.

This is an application for bail by one Budh Sen said to be involved in a case u/s 302/307 IPC registered at crime No. 761 of 1991 P. S. Civil Lines, District Budaun.

2. The main ground on which this bail application has been pressed before me that the Applicant, according to his contention, was not known to the witnesses and in order to substantiate this situation he had applied before the C. J. M. concerned on 20-11-91 that a test identification parade of the Applicant by the witnesses may be arranged and the same has not been done so far despite an order of C. J. M. for it. Though there are other pleas as of alibi etc, I need not go into them.

3. This plea that the accused Applicant had applied for test identification parade and the same has not been arranged by the police despite orders of C. J. M has been coming before this Court very often. In this particular case, the additional Government Advocate appearing on behalf of the State was called upon to show as to why this was being denied and his contention has been that since the accused was named in the FIR and also subsequently in the statements of the witnesses recorded u/s 161 Code of Criminal Procedure there was no occasion for test

identification parade. It appears that the prosecution is ignoring the basic principles of justice that the accused should also not be denied any opportunity specially the privilege of defence. His claim that he is not known to the witnesses is a relevant fact in order to dislodge the assertions of the prosecution that he was known to them and they had named him. In order to substantiate this contention of the defence, the accused can and has validly claimed test identification parade and refusal there of even if it be by way of omission on the part of the prosecution is likely to give rise to various inferences, which, may be better not enumerated in this individual case. The prosecuting agency is a part of the State and has to act in a manner which may not be prejudicial to any person, specially the accused. It is true that the State has to prosecute an accused but it does not mean that it has to deny an opportunity of defence also to the accused person in order to achieve a success in the prosecution. In fact such an effort on the part of the prosecuting agency would tend to show an undesirable bias to the prosecution.

4. In view of the above discussion, the Applicant should be granted facility of bail.

5. The Applicant shall be admitted to bail on his executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of Chief Judicial Magistrate concerned.