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**(2006) 12 AHC CK 0150**

**Allahabad High Court**

**Case No:** Criminal M.B.A. No. 18634 of 2006

Pratap Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Dec. 12, 2006

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 304, 307, 308

**Citation:** (2007) 2 ACR 1412

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

**Bench:** Single Bench

**Advocate:** J.S. Kashyap, for the Appellant; Jai Singh and Arun Kumar and A.G.A., for the Respondent

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### **Judgement**

Ravindra Singh, J.

This application has been filed by the applicant Pratap Singh with a prayer that he may be released on bail in Case Crime No. 141 of 2006 under Sections 304 and 308, I.P.C. P.S. Dannahar district Mainpuri.

2. The prosecution story in brief is that the F.I.R. of this case has been lodged by Hradaya Ram on 27.5.2006 at 3.15 p.m. in respect of the incident which had occurred on 27.5.2006 at about 7.15 a.m. alleging therein that a conversation was going on in respect of the partition of the property between the first informant and his brother, the applicant Pratap Singh but the applicant and his son co-accused Hari Om became agitated and climbed on the roof having unauthorized firearm and discharged shots indiscriminately consequently the first informant, his son deceased Satish alias Pinki and his nephew Mahesh, received the injuries and they fell down. The alleged occurrence was witnessed by Kamlesh, wife of the first informant Mahabir and other villagers. After committing the alleged offence the accused persons ran away from the place of occurrence by discharging shots. The injured persons were taken to district hospital but during treatment deceased Mahesh

succumbed to his injuries, leaving his dead body in the hospital the first informant went to the police station to lodge the F.I.R.

3. According to the Post Mortem Examination Report, the deceased had received six-gun shot wounds of entry, and the injured Hraday Ram has received multiple firearm wounds of entry, and two abrasions and the injured Pinki received eight wounds caused by firearm.

4. Heard Sri J. S. Kashyap, learned Counsel for the applicant, learned A.G.A. for the State of U.P. Sri Jai Singh and Arun Kumar, learned Counsel for the complainant.

5. It is contended by the learned Counsel for the applicant that the applicant belongs to the family of the deceased. There was no motive or intention to commit the alleged offence, the alleged occurrence had taken place in a sudden quarrel, it was not pre-intended. The injuries were caused from the roof as alleged by the prosecution, which shows that the injuries were not caused with the intention of committing the murder of the deceased. The F.I.R. is delayed without any plausible explanation. There is no independent witness to support the prosecution story. The prosecution story is not corroborated by the medical evidence. The applicant is an old and sick man aged about 60 years. He is in jail since 31.5.2006. He is not having any criminal antecedent. He is an innocent person. Therefore, he may be released on bail.

6. In reply to the above contentions of the learned Counsel for the applicant it is submitted by the learned A.G.A. and the learned Counsel for the complainant that there is no delay in lodging the F.I.R. because, first of all, all the injured persons including the deceased were taken to the hospital and medical aid were provided to them but during treatment the deceased succumbed to his injuries, then the first informant went to the Police Station and lodged the F.I.R. The applicant and his son fired indiscriminately by the firearms, which caused injuries on the person of the deceased and injured persons. The deceased had received six firearm wounds whereas both the injured have received firearm wounds of entry. There is no infirmity in the site plan and inquest report to show that the applicant was falsely implicated. During investigation the injured witnesses have clearly stated that the applicant has discharged shots by half gun and his son Hari Om discharged the shot by country made pistol. The injured witnesses have therefore, supported the prosecution story. The alleged occurrence had taken place in broad daylight. On the basis of the allegation made against the applicant and other co-accused, post mortem examination report and the medical examination report, prima facie offence under Sections 302 and 307, I.P.C. is made out but without any reason the charge-sheet has been submitted u/s 304/308, I.P.C. In case the applicant is released on bail, he shall tamper with the evidence.

7. Considering the facts, circumstances of the case, post mortem examination report and medical examination report the submissions made by the learned Counsel for

the applicant, learned A.G.A. and the learned Counsel for the complainant, and considering the allegations that the applicant and co-accused Hari Om have fired indiscriminately in broad day light and caused injuries on the person of the deceased and two injured persons, and the gravity of offence which is too much and without expressing any opinion on the merits of the case, the applicant is not entitled for bail. The prayer for bail is refused.

8. Accordingly this application is rejected.