

## Santosh Kumar Srivastava alias K.D. Vs State of U.P.

**Court:** Allahabad High Court

**Date of Decision:** Oct. 4, 2005

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 307

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

**Bench:** Single Bench

**Advocate:** R.P. Dubey, Manish Tiwari and A.K. Awasthi, for the Appellant; V.P. Srivastava and A.G.A., for the Respondent

**Final Decision:** Dismissed

### Judgement

Ravindra Singh, J.

Heard Sri Manish Tiwari and Sri R.P. Dubey , learned counsel for the applicant and the learned A.G.A.

2. The applicant has applied for bail in Case Crime No. 264 of 2005 under Sections 307 I.P.C. P.S. Bhelupur District Varanasi.

3. From the perusal of the record, it appears that in the present case, the F.I.R. was lodged by Sri Ramakant Tripathi, at P.S. Bhelupur on

22.7.2004 at 3.35 A.M. in respect of the incident which had occurred on 22.7.2004 at about 2.00 A.M. The distance of the police station was

about 5 Km. from the alleged place of occurrence

4. According to the F.I.R. version, the father of the first informant had purchased a house and shops and shops from one Jawahar Jaiswal on

17.4.2004. The possession of that house and the shops was given by Jawahar Jaiswal and he has taken away his goods but the applicant locked

the shops and demanded Rs. 1 1/2 lakhs and one shop, to open the lock. In the night of 21/22.7.2004, the first informant , his father Hausla

Prasad Tripathi, his mother and his Bhanja more sleeping in that house at about 1.35 A.M., the door of that house was knocked and the applicant

asked to open the door but the door was not opened and he was asked to come in the morning. Thereafter, the applicant extended the threat by

leaving the door of the first informant. After expiry of half an hours, the applicant again came at the house of the first informant and knocked the

door and asked the father of the first informant to open the door. He was shouting and knocking the door, then the first informant, his father and his

Bhanja came on the barja of the room and asked the applicant to come in the morning for conversation. At that time, the applicant fired at the

father of the first informant who received injury on his head, he was taken to Heritage hospital and the F.I.R. was lodged.

5. The Medical examination report shows that the injured Hausla Prasad received a gun shot wound of entry on its exist wound. The active

bleedings was present and brain matter was coming out. The injury was grievous in nature. In X-ray report, there was a fracture of left frontal bone

with a contusion.

6. It is contended by the learned counsel for the applicant that the alleged occurrence had taken place in the dark hours of night and there was no

source of light and some un-known person has caused injury but due to ulterior motive , the applicant is named in the F.I.R. The applicant was

arrested by the police on 22.7.2004 at 1.45 P.M. and in respect of his arrest a telegram was sent to the District Judge, C.J.M. and S.S.P.

concerned, mentioning therein that the applicant was arrested from his house on 22.7.2005 at about 5.00 A.M. and he was detained at the police

station Bhelupur and there was an apprehension of his false implication in a CrI. Case . This telegram was sent at 7.45 A.M. It is further contended

that there is no independent witness to support the prosecution story and the applicant is in jail since 22.7.2004.

7. It is opposed by the learned A.G.A. and learned counsel for the complainant by submitting that the applicant is a notorious criminal having his

involvement in several cases of murder, attempt to murder, drug trafficking, tress passing and cases of Goondas Act. He is having network of

criminals in different part of the country. He committed the alleged offence because one day prior the alleged occurrence, he had locked the shops

of the complainant and demanded a sum of Rs. 1,50,000/- and one shop as Goonda Tax and clearly stated that the locks will not be opened till

The aforesaid demand of Goonda Tax was not fulfilled that is why he committed the alleged offence.

8. It is further contended that the applicant is named in the F.I.R.. He caused the injury which is grievous in nature and due to that injury, the blood

and brain matter was coming out . The F.I.R. was promptly lodged in the mid night at 3.35 A.M. with in 1.35 hours by covering the distance of 5

Kms. There was no reason of the false implication of the applicant. The applicant was properly identified . A telegram was sent on behalf of the

applicant showing his arrest from his house at 5.00 P.M. on 22.7.2004 is having no affect because prior sending the telegram i.e. 7.45 A.M. The

F.I.R. has come in existence at 3.45 A.M. in which the applicant was named.

9. It is further contended that the wife of the applicant is ill. She is suffering from cancer , in case the applicant is not released on bail the life of the

wife of the applicant will be in danger.

10. In view of the facts and circumstances of the case and the submissions made by the counsel for the applicant and the learned A.G.A. the

applicant is not entitled to be released on bail.

11. However, considering the period of detention of the applicant in jail, it is directed that the trial court shall expedite the proceedings as early as

possible without granting in any unnecessary adjournment.

12. Office is directed to send a copy of this order to the learned Sessions Judge, Varanasi forth with for its compliance.

13. Accordingly this bail application is rejected at this stage.