

(2009) 09 AHC CK 0012
In the Allahabad High Court
Case No : Criminal M.W.P. No. 19370 of 2009

Hukum Singh Yadav and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2)
Penal Code, 1860 (IPC) — Section 120B, 302
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)

Citation : (2009) 3 ACR 3477

Hon'ble Judges : Y.C. Gupta, J; Ravindra Singh, J

Bench : Division Bench

Advocate : L.S. Yadav and Reema Srivastava, for the Appellant; A.G.A., for the Respondent

Final Decision : Disposed Of

Judgement

Ravindra Singh and Y.C. Gupta, JJ.—Heard Sri L. S. Yadav, and Smt. Reema Srivastava, learned Counsel for the Petitioners and the learned A.G.A. for the State of U. P.

2. This petition has been filed by the Petitioners Hukum Singh Yadav and Ajeet Yadav with a prayer to quash the F.I.R. of Case Crime No. 962 of 2009 under Sections 302, 120B, I.P.C. and 3(2)(v) of S.C./S.T. Act and 7 of Criminal Law Amendment Act, P.S. Mardah district Ghazipur and not to arrest the Petitioners till the submission of the police report u/s 173(2), Cr. P.C. in the above mentioned case.

3. The facts in brief of this case are that the F.I.R. of this case has been lodged by O.P. No. 4, Kedar Nath on 4.8.2009 at 3.10 p.m. in respect of the incident which had allegedly occurred on 4.8.2009 at about 1 p.m. or 1.15 p.m. alleging therein that the deceased Chandra Mohan Rao the son of the first informant was a Ward Boy, who was posted at the Primary Health Centre, Mardah, the first

informant and the deceased were living in the Government residence provided in the Hospital Campus. On the day of the alleged incident, there was Raksha Bandhan festival, to celebrate the same the daughter and son-in-law of the first informant had also come at the residence of the first informant, after taking the meal the deceased had gone to attend the Government Duty, the first informant alongwith his daughter, son-in-law and daughter-in-law came out from their residence for the purpose of purchasing some articles, they saw that the co-accused Ram Ashrey Yadav and Ramesh Yadav were discharging shots indiscriminately towards the son of the first informant, consequently he sustained injuries and fell down, due to this incident panic was created in the hospital campus, after committing the murder, the accused persons fled away from the place of occurrence, the deceased in an injured condition was taken to the District Hospital, Ghazipur where he died, the motive behind the alleged incident was that the deceased was having love affairs with Manju Yadav, daughter of Ram Sakal Singh Yadav, subsequently, he performed Court marriage about two years prior of the alleged incident with Manju Yadav, due to which Ram Sakal Yadav and his son were to much annoyed and they have extended threat to commit the murder of the deceased and his wife. The murder of the deceased has taken place at the behest of Ram Sakal Yadav.

4. It is contended by the learned Counsel for the Petitioners that in this case the Petitioners are not named in the F.I.R., other co-accused persons Ram Ashrey Yadav, Ramesh Yadav and Ram Sakal Yadav are named in the F.I.R., who have been charge-sheeted by the Investigating Officer vide charge-sheet dated 3.8.2009 but it has been mentioned therein that the names of the Petitioners have also come to light in respect of hatching the conspiracy for committing the murder of the deceased Chandra Mohan Rao, its investigation was pending, Petitioner No. 1 Hukum Singh Yadav is a responsible person, he is a political worker of Samajwadi Party, he had contested many elections and he is the representative of Sri Radhey Mohan Singh, M. P. from Ghazipur, on account of some political rivalry with oblique motive, he has been implicated in the present case, whereas there is no evidence against the Petitioners. So far as Petitioner No. 2 is concerned he is aged about 14-15 years, he is a student of High School class, he is being made the accused only because he is the son of Ram Sakal Singh Yadav, the Investigating Officer has collected the evidence and submitted the charge-sheet against the co-accused persons but there is no credible evidence against the Petitioners with any offence of conspiracy, the only allegation against the Petitioners is that their names have been disclosed by the co-accused Ram Sakal, Ram Ashrey and Ramesh in their extra-judicial confession, and there is no other evidence against the Petitioners or evidence is not sufficient to constitute the commission of any offence, the local police is intending to arrest the Petitioners, there is no direct or indirect evidence connecting the Petitioners in the commission of the alleged offence, the confessional statement of the accused is not admissible, and does not corroborate by any other evidence to show that the Petitioners are also involved

in hatching the conspiracy, even on the basis of the material collected by the Investigating Officer no offence of hatching the conspiracy is made out against the Petitioners, the manner in which the deceased was murdered has been clearly mentioned in the F.I.R., no such assertion has been made to show that the murder of the deceased was the result of criminal conspiracy, there is no public witness to support the prosecution version, in case the arrest of the Petitioners is not stayed the fundamental right of the Petitioners shall be infringed. In support of the above contention the learned Counsel for the Petitioners relied upon the case of Sri Jayendra Saraswathi Swamigal Vs. State of Tamil Nadu,

5. In reply to the above contention it is submitted by the learned A.G.A. that in the present case charge-sheet has been submitted against the co-accused Ram Ashrey, Ramesh Yadav and Ram Sakal in which it is clearly mentioned that the names of the Petitioners have also come to light with the allegation that they have hatched the conspiracy for which the investigation is pending, at this stage it cannot be said that what type of the evidence available against the Petitioners, during the course of investigation credible evidence in respect of the above mentioned allegation may be collected, there is no reasons of false implication of the Petitioners, the allegations are prima facie disclosing the commission of murder, the lodging of the F.I.R. is not barred by any law, at this stage it cannot be said that no evidence shall be available to the Investigating Officer against the Petitioner, so far as the issue of juvenile is concerned, it may be decided by the competent court, at the appropriate stage, on this submission neither the F.I.R. may be quashed nor the arrest of the Petitioner may be stayed. The present writ petition is devoid of merits, the same may be dismissed.

6. Considering the submission made by the learned Counsel for the Petitioners and the learned A.G.A. for the State of U. P. and from the perusal of the record including the F.I.R. It appears that it is a case in which Chandra Mohan Rao has been killed, the allegations made in the F.I.R. are also disclosing the commission of the cognizable offence, the charge-sheet has been submitted against other co-accused persons, there is no ground to interfere in the F.I.R., therefore, the prayer for quashing the F.I.R. is refused.

7. So far as the next prayer for staying the arrest of the Petitioners is concerned, it is ancillary prayer, the main prayer is refused, the investigation is pending at this stage and speculation regarding availability of the evidence during the course of investigation cannot be made but the question of admissibility/credibility of the evidence shall arise when principle laid down in case of Sri Jayendra Saraswathi Swamigal is not applicable in the present case, the gravity of the offence is too much, therefore, we are not inclined to stay the arrest of the Petitioners, therefore, such prayer is refused.

However, considering the facts and circumstances of the case, it is directed that in case the Petitioners appear before the Court within 30 days from today and apply for bail, the same shall be heard and disposed of in view of Amarawati and

Another (Smt.) Vs. State of U.P., and in the case of Criminal Appeal No. 538 of 2009, Lal Kamendra Pratap Singh v. State of U. P., decided on 23.3.2009: 2009 (2) ACR 2063 (SC), by the Supreme Court.

8. It is further directed that in case the plea of juvenile is taken by Petitioner No. 2, the same shall be considered in accordance with law.

9. With the above direction this petition is finally disposed of.