
(2006) 05 AHC CK 0173

In the Allahabad High Court

Case No : Criminal Misc. Bail Application No. 17662 of 2005

Kanhaiya Lal (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2006) 05 AHC CK 0173

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : K.P. Singh and Satish Trivedi, for the Appellant; Dharmendra Singh and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Ravindra Singh, J.—This application is filed by the applicant Kanhaiya Lal with a prayer that he may be released on bail in case crime No. 39 of 2005, u/s 302 I.P.C., P.S. Ghoorpur district Allahabad.

2. The prosecution story, in brief, is that in the present case the F.I.R. was lodged by one Ram Babu Yadav at P.S. Ghoorpur on 17.3.2005 at 5.10 a.m. in respect of the incident, which had occurred in the night of 16/17.3.2005 at about 11.00 p.m. The distance of the police station was 4 km from the alleged place of occurrence. It is alleged that the deceased was murdered in front of the house of co-accused Baboo Kole R/o Jasra. The F.I.R. was lodged against the applicant and co-accuse Baboo Kole, Sandeep Kumar and Vijay Kumar. It is alleged that the deceased Narendra Kumar Yadav, the elder brother of the first informant was going to attend the call of nature at about 11.00 p.m. on 16.3.2005, when he reached in front the house of co-accused Baboo Kole he was caught hold by co-accused Baboo Kole, Vijay Kumar and Sandeep Kumar and on their exhortation the applicant used a sword blow on the head of the deceased. He cried loudly then the first informant, his brother Raj Karan and his nephew Hari Om reached at the place of the occurrence. The deceased floundered and fell down in injured

condition. The alleged occurrence was witnessed in electric light. The deceased was taken to the hospital by the first informant. During treatment he died. Thereafter, his dead body was sent to mortuary for post mortem examination. Thereafter, the F.I.R. was lodged by the first informant.

3. Heard Sri Satish Trivedi learned Senior Advocate assisted by K.P. Singh learned Counsel for the applicant " and learned A.G.A. and Sri Dharmendra Singh learned Counsel for the complainant.

4. It is contended by the learned Counsel for the applicant: -

(i) That the alleged occurrence had taken place in the dark hours of night. There was no sufficient source of light. At the time of alleged occurrence there was no electric supply.

(ii) That the alleged occurrence was not witnesses by the first informant and other witnesses, because according to the F.I.R. itself they came at the place of occurrence after commission of the alleged occurrence, at the shrieks of the deceased. There was no opportunity for the alleged witnesses to see the alleged occurrence.

(iii) That the applicant has been falsely implicated only on the basis of doubt and suspicion because the relations between the parties were not cordial.

(iv) That even according to the prosecution version the motive for committing the murder was to the co-accused Baboo Kole because his son Santosh Kole is a notorious criminal having a long criminal history. He is having a gang of criminals. On the other hand the applicant is having no criminal antecedent and he is having no concerned with co-accused Baboo Kole and his family members. In the F.I.R. itself it is clearly mentioned that the applicant and other co-accused persons were having annoyance with the deceased, because Santosh Kole was got arrested by the police at the instance of the deceased.

(v) That according to prosecution version itself no sword blow was repeated. Only one sword blow was used in causing the injury on the person of the deceased. It may be a result of sudden quarrel also the injury was caused by some unknown person, in the darkness of the night.

(vi) The prosecution story is not corroborated by the post mortem examination report because there is no explanation of injury No. 2 i.e. abraded contusion.

(vii) The applicant is innocent and he has not committed the alleged offence. He has been falsely implicated he is in jail since 29.3.2005, so he is entitled for bail.

5. It is opposed by the learned A.G.A and the learned Counsel for the complainant by submitting that the alleged occurrence had taken place inside a village. The F.I.R. was promptly lodged. The deceased was taken to the hospital by the first informant where he died during the treatment. The alleged occurrence was witnessed by the first informant and other witnesses. There was moonlit because the alleged occurrence had taken place in the Shuklpaksh and

there was sufficient light of electric bulb also. The applicant is main accused who caused head Injury by using sword blow which was fatal. The prosecution story is fully corroborated by the medical evidence and at the pointing out of the applicant the sword used in the commission of the offence was recovered, therefore the applicant is not entitled for bail.

6. After considering the facts and circumstances of the case, submissions made by the learned Counsel for the applicant, learned A.G.A. and the learned Counsel for the complainant and considering the nature of the offence and its gravity and without expressing any opinion on the merits of the case the applicant is not entitled for bail, therefore, the prayer for bail is refused.

7. Accordingly, the bail application is rejected.