
(2006) 08 AHC CK 0129

In the Allahabad High Court

Case No : Criminal Misc. Second Bail Application No. 14934 of 2006

Krishna Shanker Madheshia (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 120B, 302, 307

Citation : (2006) 08 AHC CK 0129

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : V.P. Srivastava, Lav Srivastava and Gyanendra Prakash Srivastava, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Ravindra Singh, J.—This application has been filed by the applicant Krishna Shanker with a prayer that he may be released on bail in Case Crime No. 447 of 2005 under Sections 307, 302, 120B I.P.C.P.S. Madhuban district Mau.

2. This is second bail application. Criminal Misc. First Bail Application No. 21412 of 2005 has been rejected by Hon"ble C.P. Misra, J. (Now Retired) after considering the case on its merits.

3. Heard Sri V.P. Srivastava, Senior Advocate, assisted by Sri Lav Srivastava, learned Counsel for the applicant and the learned A.G.A. for the State of U.P.

4. It is contended by the kernal counsel for the applicant:

1. That the alleged occurrence had taken place in the dark hours of night at about 8.00 p.m. on 6.5.2005. Its F.I.R. has been lodged on 20.5.2005 at about 9.55 p.m. The distance of the police station was only 4 k.m. from the alleged place of occurrence.

2. That the F.I.R. is delayed by four days without any plausible explanation.

3. That there is no motive or intention for the applicant to commit the alleged offence.

4. That the alleged occurrence was committed by some unknown persons but under doubt and suspicion the F.I.R. has been lodged against the applicant and other co-accused persons alleging therein that at the exhortation of the co-accused Santosh and Vijay Kumar the applicant discharged shots by country made pistol which hit the stomach of the deceased Vinay Kumar. After receiving the injury the deceased became unconscious.

5. That according to the prosecution version the statement of the deceased was recorded u/s 161 Cr.P.C. He has given a different theory when his dying declaration was recorded by the learned Magistrate. It was not in corroboration of the statement given by him u/s 161 Cr.P.C. The dying declaration recorded by the learned Magistrate is after thought. It was recorded on 23.5.2005 whereas the F.I.R. Was lodged on 20.5.2005.

6. That the alleged occurrence has not taken place as alleged by the prosecution because in respect of the same incident a news item was published in daily news paper showing the story of looting.

7. That in the present case the statements of P.W.1 Sri Chand Baranwal and P.W. No. 2 Bhanu Pratap Singh have been recorded in the trial court. According to their statements the first informant was not present at the place of occurrence. The trial has not been concluded whereas this Court has directed on 8.12.2005 to conclude the trial within six months from the date of communication of the order, therefore, the applicant may be released on bail.

5. In reply to the contention made by the learned Counsel for the applicant the learned A.G.A. submits:

1. That at the time of disposal of the first bail application the F.I.R., Post Mortem Examination Report, Dying Declaration and other material collected by the I.O. during the investigation was properly considered by this Court and the grounds taken by the applicant in this bail application have already been considered. There is only one new ground i.e. two witnesses have been examined in the court and the trial has not been concluded within 6 months as directed by this Court.

2. That the statements of witness No. 1 and 2 may not be scrutinised at this stage because they have not been declared hostile. The sessions trial of the applicant is in progress and there is no undue delay.

6. Considering the facts and circumstances of the case and the submission made by the learned counsel for the applicant and the learned A.G.A. and without expressing any opinion on the merit of the case, I am of the view that the sessions trial of the applicant is in progress and it is not proper stage to scrutinise the statements of P.W.1 and P.W.2 because it may affect the mind of the trial judge. There is no good ground to release the applicant on bail. The

prayer for bail is refused.

7. Accordingly this application is rejected.