

(2006) 09 AHC CK 0109

In the Allahabad High Court

Case No : Criminal Misc. Bail Application No. 12644 of 2006

Manish Rai and Anil Rai (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Criminal Law (Amendment) Act, 1932 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307

Citation : (2006) 09 AHC CK 0109

Hon'ble Judges : R.C. Deepak, J

Bench : Single Bench

Advocate : V.P. Srivastava, Jagdish Singh Sengar, Lav Srivastava and Ajit Kumar Singh Solanki, for the Appellant; M.N. Shukla, Rajesh Yadav and R.C. Sharma and A.G.A., for the Respondent

Judgement

R.C. Deepak, J.—The applicants-accused Manish Rai son of Daya Shankar Rai, resident of Mittupur, P.S. Jahanganj, District Azamgarh and Anil Rai son of Jagat Rai, resident of Kakshikala, P.S. Kopaganj, District Mau have filed this present bail application for their release on bail in case crime No. 497 of 2006 under Sections 147, 148, 149, 307 IPC and Section 7 Criminal Law Amendment Act pertaining to police station Kopaganj, District Mau.

2. The facts of the case emerging from the FIR are that the election for the post of Block Pramukh of Block Kopaganj, District Mau was scheduled to be held, that the canvassings were going on in this regard. On 20.4.2006 the informant Kapil Dev Yadav was canvassing the voters at village Kurthi Jafarpur, Kopaganj, District Mau for casting their votes in favour of his daughter-in-law. It is alleged that at about 4.00 p.m. the applicants accused with co-accused and many others came there with pre-planned by motor cycles and four wheelers in order to kill him, to create terror among the public and started indiscriminate firing with rifles, guns and illegal arms as a consequence the shops were closed, turbulence prevailed among the people, the fire resorted to co-accused Manoj Rai hit Pankaj son of

Mahesh who alleged to have sustained fatal injuries, that the shot alleged to have been fired by the remaining accused caused injuries to Ram Nagina, Ram Janam, Subhash, Ram Bachan and Shailendra. Radhey Shyam, Rajesh and many others are said to have witnessed the alleged occurrence. With these allegations the informant Kapil Dev Yadav presented an application at the police station Kopaganj and on its basis a case as case crime No. 497 of 2006 u/s 147, 148, 149, 307 IPC and Section 7 Criminal Law Amendment Act was registered against the applicants-accused and others.

3. The applicants have filed the copies of the FIR (Annexure-1), injury reports of the injured (Annexure-2 to 8), note of the Investigating Officer (Annexure-9), Inspection Note (Annexure-10), statement of injured Subhash (Annexure-11), discharge slip of Manish Rai (Annexure-12), Application to the S.S.P. dated 21.4.2006 (Annexure-13), Application u/s 156(3) Cr.P.C. (Annexure-14), photographs of the damaged vehicle (Annexure-15) and certain other documents in support of their bail application. Apart from supplementary affidavit annexing the copy of the recovery of vehicles (Annexure-1).

4. On the other hand Arvind Kumar Yadav filed counter affidavit on behalf of the informant. Tej Pratap Singh, Sub Inspector has also filed counter affidavit.

5. I have heard Sri V.P. Srivastava, learned Senior Counsel with Sri Jagdish Singh Sengar, learned Counsel for the applicants-accused, Sri Rajesh Yadav, learned Counsel for the informant, learned Addl. Government Advocate for the State and perused the record.

6. Learned Counsel for the applicants-accused have vehemently argued that the prosecution has not come up with the actual facts of the case leading to the alleged occurrence. In fact Smt. Kaushalya wife of Ashok Kumar Rajbhar resident of village Mahuawar Basgiliya, police station Kopaganj, District Mau was projected a candidate for the post of Block Pramukh of Block Kopaganj, District Mau, that she was a rival candidate of Smt. Sumitra/daughter-in-law of the informant Kapil Dev Yadav the sitting M.L.A. of the ruling party in the State of Uttar Pradesh. The applicants were supporting and helping her in this election, that their such participation annoyed the informant and falsely implicated them in the present case, that Ashok Kumar had hired a TATA SUMO bearing registration No. UP 54D-0250 to canvass the voters, that on the date of alleged occurrence Ashok Kumar Rajbhar, Shiv Shankar, Achchey Lal and many others were canvassing the voters at village Kurthi Jafarpur. One Ashok Kumar member of Panchayat met them there, that they were talking to him in regard to the election. The informant Kapil Dev Yadav reached there with his associates and started abusing them saying that they were influencing his voters and he (Kapil Dev Yadav) resorted to fire. They took shelter behind the vehicle which was damaged and its frontal glass sustained fire arm injuries, that in order to ensure their protection Achchey Lal opened fire with the gun of Shiv Shankar and managed to escape leaving their vehicle as is apparently clear from Annexure-9 of the inspection note of the Investigating Officer wherein four motor cycles Hero

Honda CD Dawn UP 54 7222, Splendar No. UP 54D 7973, UP 54-C 7098, UP 54C 6850 were recovered but except the aforesaid Tata Sumo none of the recovered vehicles belong to them (Ashok Kumar and others). The Investigating Officer noticed the presence of bullet injuries on the glass of the vehicle. Advancing his arguments he further submits that the prosecution has disputed the presence of bullet injuries on the glass of the vehicle. The proper opportunity was provided to the prosecution to get the vehicle technically examined to workout the truth but the prosecution has deliberately denied to do so, therefore, the noting of the Investigating Officer remained undisputed. Ashok Kumar Rajbhar tried to lodge a report in regard to this incident but due to influence of informant the sitting M.L.A. of the ruling party his report was not lodged, that he made an application dated 21.4.2006 to the S.S.P. but with no result, ultimately he filed an application u/s 156(3) Cr.P.C. before the court of Magistrate concerned already referred to above.

7. The further contention of learned Counsel for the applicants-accused is that the applicant Manish Rai had already suffered fracture at his leg, that he was got admitted in National Hospital, Gorakhpur on 18.4.2006 for repair of his injuries and he was discharged on 28.4.2006 (Annexure-12). The occurrence is alleged to have taken place on 20.4.2006 and he has also been named as one of the assailants, although he was in the hospital and was not in a position to move freely, therefore, the false implication of the applicants in the case can not be ruled out.

8. Learned Counsel for the applicants-accused further submits that the alleged preplanned assault was made to kill the informant but surprisingly enough he did sustained even no scratch this also belies the prosecution case. The further contention of the learned Counsel for the applicants-accused is that there is no specification of weapon or role so far as the present applicants are concerned. The alleged shot made by the co-accused Manoj Rai alleged to have hit Pankaj who allegedly suffered grievous and fatal injuries. So far as the injuries on the person of other injured are concerned they are neither grievous nor fatal and therefore, they do not constitute an offence punishable u/s 307 IPC.

9. On the other hand learned Counsel for the complainant and learned A.G.A. submit that the presence of the applicants-accused have not been shown in the application u/s 156(3) Cr.P.C, (Annexure-14) and role of firing has been attributed to them, therefore, they can not claim the right of self defence as none of them have sustained injuries.

10. I have given my thoughtful consideration to the arguments of the learned Counsel for the parties, the facts and circumstances of the case, the injuries found on the person of the injured except Pankaj and in absence of any specification in the FIR in regard to the applicants as well as the defence case but without ventilating any opinion on the merit thereon, I arrive at a conclusion that the applicants have made out a case for bail.

11. The applicants Manish Rai and Anil Rai involved in Case Crime No. 497 of 2006 under Sections 147, 148, 149, 307 IPC and Section 7 Criminal Law Amendment Act, P.S. Kopaganj, District Mau shall be released on bail on their furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned.

12. The applicants shall furnish an undertaking also before the C.J.M. concerned that they will not indulge in any criminal activities and will not cause either any threat or any physical violence to the injured/complainant and their family members and to the witnesses of the case. If any such report is made by any of the above person either to the court or the police, it shall be properly inquired into and if any substance therein is found, it shall be open for the court below to report to this Court so that the bail may be cancelled.