
(2006) 03 AHC CK 0183

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 1857 of 2006

Montu and Others

APPELLANT

Vs

State of U.P. and Shripal Singh

RESPONDENT

Date of Decision : 01-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437(1), 437(4), 482
Penal Code, 1860 (IPC) — Section 147, 148, 302, 304, 307
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1), 3(2)(5)

Citation : (2006) 03 AHC CK 0183

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Advocate : Shishir Tandon, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—The applicants, through this application, have prayed for the permission of this Court for filing of fresh bail bonds before the CJM Muzaffarnagar for offences u/s 307/302 IPC and Section 3(1)(x) SC/ST Act in crime No. 39A of 2005, P.S. Thana Bhawan, district Muzaffarnagar by invoking inherent power u/s 482 Cr.P.C.

2. The facts of the case are that the applicants are accused in crime No. 39-A/05, P.S. Thana Bhawan, district Muzaffarnagar. The FIR (annexure 2) of the said incident was lodged by Sri Pal Singh the informant on 27.1.2005 at 2 A.M. in respect an the incident alleged to have taken place on 26.1.2005 between 8 and 9 P.M. The present applicants were arrayed as an accused in the aforesaid FIR. According to the version of the FIR the applicants assaulted the deceased Rishi Pal with lathi and danda as a result of which he received fatal injuries and died in the field of Samar Pal and Satish s/o Ram Chandra Saini. The FIR was registered u/s 304, 147, 148 IPC as crime No. 39-A/05 at P.S. Thana Bhawan, district Muzaffarnagar. The present applicants Montu, Sachin, Omkar, Sonu, Ravinder

and Ravi surrendered in the court in the aforesaid crime number for aforesaid offences and moved bail application before the Magistrate, which was rejected. Subsequently, they filed criminal misc. bail application No. 453/05 before the Sessions Judge, Muzaffarnagar, who vide his order dated 18.3.2005, allowed their bail application and enlarged them on bail on executing a personal bond of Rs. 40,000/- and two sureties each in the like amount to the satisfaction of Magistrate concerned in the aforesaid offences vide annexure No. 3. Subsequently, the charge sheet (annexure 1) was filed against the applicants u/s 147, 148, 307 and 302 IPC and Section 3(2)(5) SC/ST Act. Annexure 4 is the post mortem report of the deceased, which indicates that the deceased has received four injuries in all. Since the charge sheet is laid against the applicant u/s 307 and 302 IPC, therefore, they have prayed through the present application, that they should be allowed to file fresh bail bonds before the CJM Muzaffanagar for the aforesaid added/alterd offences u/s 307 and 302 IPC and Section 3(2)(5) of SC/ST Act in the aforesaid crime number.

3. I have heard the learned Counsel for the applicants and learned AGA.

4. Vide Criminal Misc. Application No. 1058 of 2006 Bijendra alias Virendra and Ors. v. State of U.P. and Anr. I have held that if the accused are on bail in respect of some of the offences and subsequently another offences are added against them then there is nothing in the Code of Criminal Procedure, which permits only filing a fresh bail bonds and sureties bonds in the newly added offences. The two offences, which have been added against the present applicants, are u/s 307 and 302 IPC and Section 3(2)(5) SC/ST Act. Section 307 and 302 IPC are punishable with imprisonment for life and are triable by Sessions Court. Magistrate cannot be allowed the accept only fresh bail bonds for the said offences as that will be against the fourth proviso to Section 437(1) Cr.P.C. which has been added by Criminal Procedure (Amendment) Act 25 of 2005. Such an order will also be against the provision of Section 437(4) Cr.P.C. Consequently the prayer made in the present application by the applicant cannot be accepted and hence is rejected.

5. Counsel for the applicant then submitted that some direction be issued for consideration of the bail application of the applicants expeditiously, as they have not mis used their bail, which has been granted to them earlier and they are ready to face the trial. It was also submitted that the present case is a cross case of crime No. 39/05 lodged on applicant side and who was aggressor can be decided only at the stage of trial. For the present the applicants have got a right of private defence of person and property both, which they are ready to establish at the trial by cogent, acceptable and reliable evidence of their witnesses.

6. Consequently on the submissions made and keeping into consideration, the facts and circumstances of the case, it is hereby directed that if the applicants surrender or appear before the trial court and makes an application for bail, the trial court will consider and dispose off their bail application as expeditiously as possible preferably on the same day after giving opportunity of hearing to the

public prosecutor. Magistrate will entertain the bail application of the applicants during the first half of the day. If the bail application of the applicants is rejected by the Magistrate, then Magistrate is directed to provide the certified copy of the rejection order to the applicant so that the applicants may move their bail application before the Sessions court the same day. The Sessions Judge is directed to decide the bail application of the applicants on the same day, if possible, after giving opportunity of hearing to the public prosecutor. This direction is given keeping in view the fact that the bail, before the magistrate in offences triable by court of session's is a mere a procedural requirement and moreover, since the charge sheet is already laid in court and all the material against the accused is available with the court/public prosecutor and that the accused has not betrayed the trust reposed by the trial court in him earlier and are ready to face the trial.

7. With the aforesaid directions this application is dismissed.