
(2007) 09 AHC CK 0163
In the Allahabad High Court
Case No : Criminal M.B.A. No. 1783 of 2007

Nanhey Tiwari alias Kamlesh Tiwari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 504, 506

Citation : (2008) 2 ACR 1241

Hon'ble Judges : B.A. Zaidi, J

Bench : Single Bench

Advocate : G.P. Dikshit, B.D. Sharma and A.K. Sharma, for the Appellant; S.D. Tripathi and S.M. Iqbal and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

B.A. Zaidi, J.—Applicant Nanhey Tiwari has come this Court for bail in Case Crime No. 770 of 2006 under Sections 307, 323, 504 and 506, I.P.C. Police Station Kannauj district Kannauj.

2. Heard Sri G. P. Dikshit, advocate for the applicant and Sri S. D. Tripathi, Addl. Government Advocate for the State.

3. On 18.9.2006 around 7 O'clock in the morning in village Gangdarapur, there was a dispute between two parties, in which accused-applicant Nanhey Tiwari is said to have fired at Pradeep Misra, brother of the complainant, who sustained a gun shot injury in his chest. There were two other co-accused (Janu and Ranu) in the case, who have already been released on bail.

4. The counsel for the applicant says that the applicant is a married man having small children and earns his livelihood as a labourer that his family will starve, since they have no source of income. No such thing has been mentioned in the bail application. It is being noticed, that similar relevant facts, are not generally mentioned, in the bail applications. The bail application has been haphazardly drafted.

5. The applicant is in jail for more than 21 months. It is not the case of premeditated assault but the dispute escalated in the heat of the moment. The accused has no criminal antecedent. The facts and circumstances emerging in the case incline us, to grant bail.

6. The counsel for the applicant has cited case of Bhausahab Nagu Dhavare v. State of Maharashtra and Anr. 2001 (Suppl) ACC 961, in which bail was granted by Supreme Court in case u/s 307, I.P.C. It is surprising to see case law being cited, on factual matters, in cases relating to bail. The facts and circumstances of each case, are different, and citing of case law is wholly irrelevant and improper, unless some law point is involved and the case in question has decided a particular law point.

7. There is no law point involved here, and still a case law, has been cited. This is not lawyering, as it should be.

8. Bail granted.

9. Applicant Nanhey Tiwari be released on bail on his furnishing a personal bond of Rs. 20,000 with one surety in the like amount to the satisfaction of the trial court.