
(2009) 08 AHC CK 0044

In the Allahabad High Court

Case No : Criminal M.B.C.A. No's. 12195 and 12933 of 2008

State of U.P.

APPELLANT

Vs

Tinku alias Rahul Paliwal and Another

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 309, 439(2)
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (2010) 1 ACR 634

Hon'ble Judges : Vijay Kumar Verma, J

Bench : Single Bench

Advocate : I.P.S. Rajpoot, A.G.A., Murlidhar and Murlidhar Misra, for the Appellant; Ajatshatru Pandey, for the Respondent

Judgement

Vijay Kumar Verma, J.—Challenge in these applications u/s 439(2) of the Code of Criminal Procedure (in short the Cr.P.C.), is to the order dated 26.2.2008 passed by Sri. P.N. Sachan, the then in-charge Sessions Judge, Hamirpur, granting bail to the opposite parties Tinku alias Rahul Paliwal and Sanjay Paliwal, who were involved in Case Crime No. 1402 of 2007, under Sections 147, 148, 143, 302, 504 and 34, I.P.C., P.S. Sumerpur, district Hamirpur.

2. Since both the applications have been moved for the same purpose and arise out of the same case crime number, hence, for the sake of convenience, both the applications are being disposed of by this common order. The papers will be referred from Crl. Misc. Bail Cancellation Application No. 12195 of 2008.

3. Shorn of unnecessary details, the facts leading to the filing of these applications, in brief, are that an F.I.R. was lodged on 17.10.2007 by Ram Kishore Pandey at P.S. Sumerpur, district Hamirpur, where a case under Sections 147, 148, 149, 302, 504 and 34, I.P.C. was registered against Vijay Mali, Tinku Paliwal alias Rahul, Sanjay Paliwal, Sageer, Sandeep and Munna alias Om Prakash at Case Crime No. 1402 of 2007. The allegations made in the F.I.R., in brief, are that on 17.10.2007 at about 7.30 p.m. when the complainant Ram

Kishore Pandey was having talks with Kamlesh Pandey, sitting on the chabutara and his son Raj Kishore alongwith his maternal uncle Ram Chandra Shukla was standing in front of the door of the house, the accused persons named above came there on two motor-cycles and on the exhortation of Tinku Paliwal, the co-accused Vijay Mali fired on Raj Kishore, which hit him and when Raj Kishore with a view to save his life, rushed towards the door of Lakhan Gupta, the accused Tinku Paliwal and Sanjay Paliwal (both opposite parties herein), fired from country-made pistols on Raj Kishore, which hit him, due to which he fell down there. In injured condition, Raj Kishore was carried to the hospital, where he was declared dead.

4. Application for bail was moved on behalf of opposite parties, which was decided by the incharge Sessions Judge, vide impugned order dated 26.2.2008, whereby both the opposite parties were released on bail. Hence these bail cancellation applications.

5. I have heard lengthy arguments of learned A.G.A. for the State, Sri. Murlidhar Mishra, advocate, learned Counsel for the complainant and Sri. G.S. Chaturvedi, senior advocate, assisted by Sri. Ajatshatru Pandey, appearing for the accused/opposite parties.

6. The bail cancellation applications were pressed mainly on the two grounds. The first ground on which the bail order is sought to be quashed is that the learned court below has granted bail to the accused persons mentioning wrong facts in the impugned order and second ground on which the application to cancel the bail order was pressed is that both the accused have long criminal history, which was not considered by the court below at the time of passing impugned bail order.

7. It was vehemently contended by Sri. Murlidhar Mishra, learned Counsel for the complainant that the court below has mentioned wrong facts in the impugned order and hence on this ground alone, the bail of the accused persons is liable to be cancelled. It was submitted by Sri. Mishra in this context that ante-mortem injury Nos. 1 and 3 cannot be caused by one firearm, whereas the court below in the impugned order has opined that both these injuries may be caused by one firearm. In this context, my attention was drawn towards the post-mortem report (Annexure-2), according to which ante-mortem injury No. 1 was wound of entry gun shot 1.1 cm. x 1 cm. on right side of chest, 1 cm. below right nipple, whereas ante-mortem injury No. 3 was wound of entry 1 cm. x 1 cm. left side of chest, 9 cm. lateral to left nipple, 9 cm. above injury No. 2. Drawing my attention towards these ante-mortem injuries, it was submitted by learned Counsel for the complainant that both these injuries are on different parts of the body, which were caused by two firearms.

8. Next submission made by learned Counsel for the complainant was that ante-mortem injury No. 3 was 9 cm. lateral to left nipple, hence this injury was possible to be caused in the manner as alleged in the F.I.R. and statements of

the witnesses recorded u/s 161, Code of Criminal Procedure and since the court below has wrongly held that F.I.R. version is not corroborated from the post-mortem report, hence on this ground also, the impugned order is liable to be set aside and bail of the accused persons should be cancelled.

9. The bail cancellation applications were vehemently opposed by learned Counsel for the accused persons contending that the impugned order granting bail may not be sound, but since the bail has not been misused and the trial is on the verge of conclusion, hence, it would not be in the interest of justice to cancel the bail, because after coming out from jail in pursuance of the impugned bail order, the accused persons have not misused the privilege of bail.

10. It was further submitted by learned Counsel for the accused persons that as per F.I.R. version, shot fired by the accused Vijay Mali had hit the deceased and when thereafter the deceased was rushing towards the house of Lakhan Gupta, the accused/opposite parties are said to have fired on him from country made pistols and since it is not ascertainable as to whose shot out of these two accused persons had hit the deceased, hence on this ground also, cancellation of the bail of the accused persons would not be justified. The contention of the learned Counsel for the accused persons was that ante-mortem injuries No. 3, which is wound of entry having its corresponding wound of exit. (ante-mortem injury No. 5) was caused by one accused only, out of the opposite parties and since it is not ascertainable either from the F.I.R. or from the statements of witnesses recorded during investigation as to whose shot of country-made pistol had hit the deceased, hence benefit of this fact should be granted to the opposite parties and their bail should not be cancelled, as the shot of one of them had not hit the deceased.

11. Having given my thoughtful consideration to the rival submissions made by parties Counsel and keeping in view the submissions made by learned Counsel for the accused persons, it would not be in the interest of justice to cancel the bail, because after coming out from jail in pursuance of the impugned order, the accused persons have not misused the privilege of bail. According to the F.I.R. and statements of the witnesses recorded during investigation, first shot was fired by co-accused Vijay Mali from revolver, which had hit the deceased. Ante-mortem injury No. 1, which is wound of entry having its corresponding exit wound (ante-mortem injury No. 2) appears to have been caused by revolver shot. Other two ante-mortem injuries caused by fire arm are injuries No. 3 and 5. The ante-mortem injury No. 3 is also wound of entry having its corresponding exit wound (ante-mortem injury No. 5), but it is not ascertainable as to by whose shot, out of these two accused persons, the deceased had sustained ante-mortem injury No. 3 having its corresponding exit wound (ante-mortem injury No. 5). Therefore, on this ground also, cancellation of bail would not be justified.

12. So far as the consideration of criminal history of the accused persons is concerned, the court below has taken this fact into account in the impugned order and hence, in my opinion, on this ground also, cancellation of bail would

not be proper and justified.

13. For the reasons mentioned herein-above, both the bail cancellation applications are hereby rejected.

14. The trial court concerned is directed to conclude the trial of the accused persons in Case Crime No. 1402 of 2007, under Sections 147, 148, 149, 302, 504 and 34, I.P.C., P.S. Sumerpur, district Hamirpur within a period of six months applying the provisions of Section 309, Code of Criminal Procedure and avoiding unnecessary adjournments.

15. S.S.P., Hamirpur also is directed to depute special messenger to procure the attendance of witnesses after obtaining their summons from the court concerned and it must be ensured that all the rest witnesses are produced for evidence in the session trial arising out of Case Crime No. 1402 of 2007, under Sections 147, 148, 149, 302, 504 and 34, I.P.C. of P.S. Sumerpur, district Hamirpur without causing any delay.

16. The Sessions Judge, Hamirpur will also ensure that the trial of the accused persons is concluded within aforesaid period.

17. The Office is directed to send a copy of this order within a week to the trial court concerned and Sessions Judge, Hamirpur as well as S.S.P., Hamirpur for necessary action.