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Jai Bhagwan Vs. State

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Court : Delhi

Decided On : Mar-03-1993

Reported in : 50(1993)DLT505

Judge : R.L. Gupta, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 439

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 60 of 1993

Appellant : Jai Bhagwan

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi,; B.S. Rana and; R.K. Bahri, Advs

Judgement :

R.L. Gupta, J.

(1) This petition has been filed for grant of bail by the petitioner. He is being prosecuted in Fir No. 254 dated 7-10-91registered in Ps Timer Pur under Sections 302/307/120B/34 Indian Penal Code and Sections 25 and 27 of the Arms Act.

(2) I have heard arguments advanced by learned Counsel for theparties. The case of the prosecution is that on 7-10-91 at about 4.45 p.m.accused Pramod, Umesh, Rampal, Rajinder, Satish and another person whowas not known to the

complainant but whom he could identify on beingshown, came in two Maruti cars bearing Nos.DAC 1314 and DA-4417.The first car belongs to Rampal accused and it was he who had driven the car at the relevant time. The other car is alleged to have been driven by Pramod accused. These two cars are alleged to have stopped in front of the office of the Ganesh Property Dealers. All the accused except the unknown one to the complainant alighted from the cars. Three of them were armed with Pistols while another was armed with a rifle. The deceased Pawan Kumar was a partner of the aforesaid firm and he was the brother of the informant Gyaneshwar. Rajinder, co-accused enquired from Ravinder & Aunty about the deceased Pawan Kumar. Ravinder called the deceased from behind the office and as soon as he entered the main door of the office,Rajinder, co-accused told the deceased that on the earlier occasion he had escaped but that they will not leave him that day. On saying this the four co-accused with their respective weapons showered bullets upon PawanKumar deceased on account of which he fell there itself. Thereafter the accused persons made good their escape from there, while firing shots from their respective weapons, in Car No. Daq 4417. The other by-standers were also injured from the bullets injuries. Pawan Kumar succumbed to the injuries. One of the by-standers also died. The occurrence was witnessed by the informant and others.

(3) The contention on behalf of the learned Counsel for the petitioner is that no role is assigned to the petitioner in the whole transaction and he is simply stated to be sitting in the car while the occurrence took place and,therefore, no case is made out against him. In this respect, learned Counsel for the State contended that test identification parade was held on 20-12-1991and the complainant Gyaneshwar had identified the petitioner also as the person who was sitting in the car at that time. The car was driven by the petitioner from the spot after the other co-accused sat in that car. It may also be noted that the other Car Dac 1314 was left at the spot by the accused persons. There is history of previous litigation also between the parties as pointed out by learned Counsel for the State. There was a plot of land belonging to Inder Pal Tomar, one of the prosecution witnesses which was allegedly illegally occupied by the accused persons. One of the witnesses has named the petitioner also as one of those who had illegally occupied the land and the deceased had somehow got vacated that piece of land from the co-accused

and the petitioner. It may further be noted that Inder Pal Tomar who was a material witness in this case has also been shot dead during this period, and learned Counsel for the State contends that he has been shot dead at the instance of the supporters of the accused persons.

(4) It may also be noted that petitioner is alleged to have absconded after the occurrence and surrendered only on 17-12-91. Not only PawanKumar died in this occurrence but the bystander Rama Kant also succumbed to the injuries' No Explanationn has been offered on behalf of the petitioner as to why he came with the accused persons in the Maruti car and prima facie it is not possible to rule out that he did not share a common intention with the other co-accused persons.

(5) The circumstances prima fade indicate that the petitioner waited in the Car to facilitate the escape of the remaining co-accused. Coupled with this fact, there was also motive for him like others because they were made to vacate the illegally occupied plot of land belonging to Tomar who also has been allegedly removed from this world by the supporters of accusedpersons. He was an absconder for about 2-1/2 months which is also quite an important consideration at this stage. The result of granting bail to the petitioner can be very hazardous and it may mean further destruction of prosecution evidence. Thus taking the totality of circumstances into consideration, I am of the view that it is not a fit case for grant of bail. THE petition is dismissed.

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