

Naresh Kumar and Bittu Vs. State

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Court : Delhi

Decided On : Mar-24-1993

Reported in : 1993(25)DRJ599

Judge : Sat Pal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 3024 of 1992

Appellant : Naresh Kumar and Bittu

Respondent : State

Advocate for Pet/Ap. : R.L. Panjwani and; A.K. Singh, Advs

Judgement :

Sat Pal, J.

(1) This petition has been filed by the petitioner for release on bail under Section 439 of the of CrI.Procedure. The petitioner had filed earlier a similar petition bearing No.CrI.M(M)1062/92 and inter alias had contended that two co-accused, namely, Suresh Kumar and Pradeep Kumar had been released on bail. The said petition was dismissed by a learned Judge of this Court vide order dated 29th July, 1992. It was mentioned in this order that the said two accused simply caught hold of the deceased whereas the petitioner was armed with a knife and is alleged to

have caused injury on a vital part of the body.

(2) In the present petition, it has been submitted that when the earlier bail petition, of the petitioner was dismissed on 29th July, 1992, the evidence of the eye witnesses had not been recorded. But now the evidence of both the eye witnesses, namely, Pawan Kumar, S/o Laxman Dass, (Public Witness -1) and Pawan Kumar S/o Rameshwar Dass, (Public Witness -2) has been recorded on 21st September, 1992 and 22nd September, 1992 and both these witnesses have been declared hostile. Accordingly, the lower Court records were summoned.

(3) Mr. Panjwani, the learned counsel for the petitioner has drawn my attention to the statement of both the eye witnesses mentioned hereinabove and has contended that both the said witnesses have not supported the case of the prosecution in their examination-in-chief and as such the petitioner should be released on bail. Mr. A.K. Singh the learned counsel for the State, however, submitted that PW-I Pawan Kumar in his crossexamination has supported the case of the prosecution.

(4) I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the statements of PW-1 and PW-2 recorded before the learned trial Judge. It is correct that PW-I in his examination-in-chief has not supported the case of prosecution, but in his cross examination he has stated that 'it is correct that when Charanjit @ Bittu went to them to call them to me, Pradeep Kumar and Suresh caught hold of Bittu and Naresh @ Bittu hit Charanjit with a knife on the left lower portion of his chest.' I would not like to appreciate the evidence so far recorded before the learned Trial Judge as certain other witnesses are yet to be examined. However, keeping in view the statement of PW-1 as a whole, I am of the opinion that this is not a fit case for releasing the petitioner on bail at this stage. Accordingly, the petition is dismissed.

(5) Lower court's records be sent back forthwith.