

Santosh Kumar and Another Vs. State of U.P.

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Court : Allahabad

Decided On : Oct-25-2010

Judge : Ravindra Singh, J.

Appeal No. : Criminal Misc. Bail application No. 25348 of 2010 and Criminal Misc. Bail application No. 25269 of 2010

Appellant : Santosh Kumar and Another

Respondent : State of U.P.

Advocate for Pet/Ap. : Sri. Raj Kumar Misra

Judgement :

1. The applicants Santosh Kumar, Sudesh Kumar have moved criminal misc. application No. 21348 of 2010, the applicant Rajesh Kumar alias Shalloo has moved criminal misc. bail application no. 25269 of 2010 with a prayer that they may be released on bail in case crime no. 168 of 2010 under sections 307,323/34,324 I.P.C. P.S. Ushrahar district Etawah.

2. The facts in brief of this case are that the F.I.R. of this case has been lodged by Anand Kishore on 20.6.2010 at 8.00 p.m. in respect of the alleged incident which had occurred in the night of 18/19.6.2010 at about 1.00 a.m., the distance of the police station was about 4 km from the alleged place of occurrence. The applicant and the co-accused Sumit Kumar alias Monti are named in the F.I.R. it is alleged that the injured Vipin Kumar was sleeping at the Wheat Purchase Centre, the

applicants and other co-accused persons in a pre-planned manner, called the injured inside the boundary of Primary Health Centre where he was assaulted by axe and danda blow, he was lifted from there and thrown into a gutter, which was at a distance of 10 meter from the alleged place of occurrence, they assaulted the injured because they were having the suspicion that he was having illicit relationship with the sister of the applicant Santosh, in the morning at about 5.00 p.m. the injured was seen lying in the gutter in serious condition, he was taken out from the Gutter and brought to J.K. Hospital, Etawah, his condition was very serious, so he was referred to Agra where he was admitted in Kamayani Hospital struggling his life, after providing the proper medical aid and the operation, the first informant went to the police station to lodge the F.I.R. According to the medical examination report of P.H.C. Sarsai Nawar he was examined on 19.6.2010 at 5.20 a.m., his condition was very poor, he was unconscious, deep and large wound was present in the head, pulses were weak, B.P. not recordable, heavy bleeding has occurred, so he was referred to District Hospital, Etawah for further measurement/treatment/medico legal process. According to the Plain C.T. of brain, multiple fractures were seen in the right parietal bone, multiple haemorrhagic contusions in right occipito temporo fronto, parietal regions with subarachnoid extension of blood in sulci of right hight fronto parietal region with right hemispheric oedema and pressure effect with blood along falx cerebri was found. The third vontricle is compressed.

3. Heard Sri Raj Kumar Misra, learned counsel for the applicants, learned A.G.A. for the State of U.P. and Sri Purshottam Dixit, learned counsel for the complainant.

4. It is contended by the learned counsel for the applicants that the F.I.R. is too much delayed, the alleged occurrence has taken place in the dark hour of night, it was not witnessed by any person except the injured, the first informant is not an eye witness but during investigation the applicant and Chatri Lal Sweeper of P.H.C. was interrogated, who stated that he saw the injured in an unconscious condition lying in the gutter, according to the statement of the injured Vipin Kumar, he was a clerk in the Wheat Purchaser Centre, Sarsai Nawar. he received a mobile call at about 1.00 a.m., which was given by a girl, he was called in the back of the hospital near the hand pump, when he went near the hand pump he did not

see any girl, thereafter, all of sudden four persons came there and he was caught by them, he disclosed the name of the applicants and the co-accused Sumit alias Monti, the applicant Santosh Kumar was armed with axe, the applicant Rajesh Kumar alias Shaloo was armed with a danda, they caused injury on his head, the co-accused Sumit Kumar alias Monti, pulled his feet consequently, he fell down, the co-accused Sudesh Kumar put a plastic bag on the head of the injured and he was caught hold after receiving the injuries, he became unconscious, when he became conscious then he narrated the whole story to his brother. According to the medical examination report, the injured did not sustain any visible injury caused by blunt object, according to the medical examination report, he had sustained deep and large incised wounds on his head and contusion on the back, which may be caused due to fall. The applicant Sudesh Kumar did not cause any injury, the naming of the applicants is after thought. The name of the applicants have been mentioned only on the basis of doubt and suspension. Santosh Kumar and Sudesh Kumar are in jail since 24.6.2010 and the applicant Rajesh Kumar alias Shaloo is in jail since 5.7.2010, they are not having any criminal antecedent, they may be released on bail.

5. In reply to the above contention, it is submitted by the learned A.G.A. learned counsel for the complainant, that in a pre-planned manner, the injured was called by the applicants and other co-accused persons in the back of the Primary Health Centre where he was assaulted by them, after causing the injury on his person when he became unconscious, he was lifted from the place of occurrence and thrown into gutter and at the pointing out of the applicant Santosh Kumar blood stained axe has been recovered on 22.6.2010 from the bush. The co-accused persons were actively involved, the condition of the injured was very serious, the injuries sustained by the injured were dangerous to life. There is no delay in lodging the F.I.R. because after providing the medical aid to the injured, which was essentially required for his survival, the F.I.R. was lodged and there is no reason of false implication of the applicants, in such circumstances, the applicants may not be released on bail.

6. Considering the facts, circumstance of the case, submission made by the learned counsel for the applicants and the learned A.G.A. and the learned counsel

for the complainant, and from the perusal of the record, it appears that the applicants have been named by the injured. It is alleged that the applicant Santosh Kumar caused injury by using axe blow, applicant Rajesh Kumar alias Shalloo used lathi below in causing the injury to the injured and the applicant Sudesh Kumar used a plastic bag covering the head of the injured. He caught the injured also. After causing injury, he was lifted by the accused persons and thrown into a gutter. According to the medical examination report the injured has sustained deep and large incised wound on his head, and contusion on the back. there was multiple fractures in the right of Parietal bone, injuries sustained by the injured were dangerous to life. All the accused persons, according to the prosecution version, were actively involved in the commission of the offence. The gravity of the offence is too much. There is no good ground to release the applicants on bail. The prayer for bail is refused.

7. Accordingly both the bail applications are rejected.

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