

Allahabad High Court

Jagan & Another vs State Of U.P. on 3 July, 2010

Court No. - 50

Case :- CRIMINAL APPEAL No. - 4008 of 2010

Petitioner :- Jagan & Another

Respondent :- State Of U.P.

Petitioner Counsel :- Sarvajeet Singh

Respondent Counsel :- Govt. Advocate

Ref: Crl. Misc. Bail Application No. 173961 of 2010.

Hon'ble Shyam Shankar Tiwari, J.

Heard learned counsel for the appellants and learned A.G.A.

Prayer for bail has been made on behalf of appellants Jagan and Sukhpal in this appeal as they have been convicted under section 304 read with 34 I.P.C. and sentenced to under go 7 years rigorous imprisonment in addition to fine of Rs. 7000/-. In default of payment of fine further to under go one year simple imprisonment. They have further been convicted under section 323 read with 34 I.P.C. and sentenced to under go 6 months simple imprisonment.

As per prosecution story on 2.4.04 when informant Vijay Pal was going to village Mujariya along with his father Nawab Singh, the appellants along with two other persons reached there at about 7.00 P.M. gave lathi blows to Nawab Singh who was sent to hospital for treatment but he succumbed to the injuries in the hospital.

F.I.R. was lodged against them and after investigation charge sheet was submitted. Learned trial court on the basis of evidence recorded the finding of conviction against the appellants as stated above.

It is contended by learned counsel for the appellants that evidence of P.W.5 is not reliable as he is a chance witness. He is related to the deceased. He has not fully corroborated the prosecution story. He is resident of a distant place. P.W.2 the other eye witness is the wife of deceased. She has not supported the prosecution case and she has been declared hostile. P.W. 1 himself is not sure about participation of all the accused persons in the Marpit. There was enmity regarding Patta from before the occurrence between the parties.

Learned A.G.A. opposed the bail application and submitted that it is a broad day light occurrence. There is no delay in lodging the F.I.R. and the witnesses have supported the prosecution case.

Considered the submissions made by learned counsel for the parties and perused the medical report.

Considering the nature of accusation and circumstances in which the occurrence took place and the quantum of sentence awarded to the appellants and also keeping in view the fact that even P.W.1 himself has not been fully believed by the trial court. without expressing any opinion on the merits

of the case it is fit case for bail.

Let the appellants Jagan and Sukhpal be released on bail on each of them furnishing a personal bond with two sureties each in the like amount to the satisfaction of court concerned in Session Trial No. 684 of 2004.

Realization of half of the amount of fine shall remain stayed. Balance amount of fine shall be deposited forthwith. The release order shall be sent after deposit of fine.

Order Date :- 3.7.2010 GNY Hon'ble Shyam Shankar Tiwari,J.

Heard learned counsel for the appellants and learned A.G.A. for the State.

Admit.

Summon the lower courts record within four weeks.

Order Date :- 3.7.2010 GNY