

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

B.A. No.67/2007, Cr. MP No.14/2007 c/w B.A. No.94/2007

Date of Order : 01.12.2007

Ratno Devi	Vs.	State
Suresh Kumar	Vs.	State

Coram

Hon'ble Mr. Justice Virender Singh

Appearing counsel:

For petitioner(s) : M/s Sunil Sethi and R.S. Jamwal,
Advocates

For respondent(s) : Mr. B.S. Salathia, Addl.Adv.General
with Mr. Raghu Mehta, Special Public
Prosecutor.

Vide this order, I am disposing of the aforesaid two Bail Applications, in which the petitioners seek the concession of regular bail during the pendency of the trial. Bail Application of Ratno Devi, Petitioner stands declined by the learned Principal Sessions Judge, Jammu vide order dated 29-08-2007, whereas of Suresh Kumar vide order dated 21-07-2007.

Petitioner, Ratno Devi, and her husband Karnail Singh, the then SSP, have been charged for commission of offences punishable under Sections 120-B, 302 and 109 RPC, whereas Suresh Kumar, petitioner, along with his other co-accused, namely Naresh Kumar, Sohan Lal, alias Sonu, Jeet Kumar alias Jeeta, Jailam Kumar alias Jeebu and Dalip Singh alias Lucky, has been

charged for the offences punishable under Sections 120-B, 302 and 364 RPC.

Admitted position is that the trial is in progress and by now out of the total list of 54 witnesses to be exhausted by the State, 28 witnesses have already been examined. This includes certain witnesses, who have been given up. The next date now fixed before the trial Court is 10th, 11th and 12th of December, 2007 for recording the evidence of certain witnesses to be produced by the prosecution.

Nitin Sharma is the deceased in this case and was driver of a Matador. He had developed relations with the daughter of the petitioner and this continued for about 6/7 years prior to the occurrence. (Name of the daughter is not being disclosed). This was to the utter disliking of the petitioner and her husband, Karnail Singh (accused herein), who was Senior Superintendent of Police. The relations of two ultimately matured in marriage on 31-03-2005. It was otherwise an inter-caste affair. The case of the prosecution then is that the girl was kept under surveillance, which at one stage constrained her to jump from the roof-top, resulting into injuries on her person. Ultimately, the parents of the girl thought of eliminating Nitin Sharma. This is the motive projected by the prosecution.

Case of the prosecution further is that Karnail Singh, the husband of the petitioner, who was Senior Superintendent of Police, and posted in 6th Battalion IRP at Rajouri, and the petitioner

hatched a conspiracy with Naresh Kumar, their SPO, and Driver, Suresh Kumar (Petitioner), and it was decided that Naresh Kumar would be paid Rupees one lac in lieu of murder of Nitin Sharma. Some amount was to be paid in advance. The prosecution case goes further that on the date of occurrence, Naresh Kumar had contacted the deceased on his mobile phone from his uncle's residence from phone No.2480656 (land line) and information was also passed to Ratno Devi, petitioner. Official Ambassador Car No.1117-JK01-F, which was allotted to Karnail Singh, and was generally being used a family car at Jammu, was used by the petitioner in this incident by changing its number plate and ultimately Naresh Kumar (SPO), by hiring the aforesaid Sohan Lal, Jeet Kumar, Jailam Kumar and Dalip Singh (allegedly hired killers), committed the murder of Nitin Sharma and threw his dead body in the canal. As per the prosecution case, petitioner Suresh Kumar, Driver, and Naresh Kumar, SPO, had kidnapped Nitin Sharma by using the official car. The prosecution, after completing the investigation from all ends, submitted the challan before the concerned Court and, consequently, all the accused were charged as referred to hereinabove.

I have heard learned counsel for both sides at length. Trial Court records were also summoned by me and perused.

Mr. Sethi submits that so far as Ratno Devi, petitioner, is concerned, she has been charged for the main offence with the aid of Sections 120-B and 109 RPC. According to him, Section 109 RPC overlaps Section 120-B RPC and the evidence collected by the prosecution for proving it is in the shape of statements of two witnesses, namely, Constable Sukhchain Singh (examined as PW-8) and Prem Dass, who is uncle of Naresh Kumar, accused (examined as PW-27). No doubt, in the initial statement of Constable Sukhchain Singh recorded under Section 161 Cr.PC, he has assigned the role to Ratno Devi of hatching criminal conspiracy falling within the mischief of Section 120-B RPC, but when he stepped into the witness box, he simply stated that in the month of August, 2005, he had contacted Naresh Kumar, accused, for handing over Rs.10,000/- as the said amount was to be given to one Rashpal Mistry. Mr. Sethi states that, in fact, Naresh Kumar, SPO, was looking after the construction work of a new house of petitioner (under construction) and if at all Constable Sukhchain Singh had handed over the aforesaid amount of Rs.10,000/- to Naresh Kumar, accused, that fact by itself would not be enough to conclude that the amount was given to Naresh Kumar, SPO, in the deal of eliminating Nitin Sharma. According to Mr. Sethi, if Constable Sukhchain Singh was not helping the State during the

trial, he could be declared hostile, but the same is not done and his evidence on oath is of no help for the prosecution.

Mr. Sethi then submits that the other piece of evidence against the petitioner is statement of aforesaid Prem Dass during the trial. He was residing in front of the house (under construction) of Senior Superintendent of Police, Karnail Singh. As per the prosecution case, Naresh Kumar, SPO, (accused) had made a call from his land line number (2480656) to Nitin Sharma calling him at a particular place. This witness did not support the case of the prosecution and was declared hostile.

Mr. Sethi states that beyond the aforesaid substantive evidence, the prosecution has not travelled any distance to connect the petitioner with the commission of the alleged offence with the aid of Section 120-B RPC.

Strengthening his arguments further, Mr. Sethi then submits that changing of number plate of the official car would not help the prosecution at all so far as involvement of the petitioner is concerned. It was an official car and anybody could change the number. Had it been the personal car of the petitioner, the situation would have been otherwise. He then submits that otherwise also, two witnesses, namely Head Constable Sudershan and Constable Subash Chander (examined as PWs 22 and 24 respectively) have not supported the case of the prosecution on this aspect. They too

have been declared hostile. In the same breath, Mr. Sethi submits that even if the prosecution during the trial makes an attempt to link the petitioner with the documentary evidence collected by it during investigation with regard to the phone calls made from the phone number of the husband of the petitioner, that too would again be of no help to the prosecution qua the petitioner and the call can be made by any one.

Mr. Sethi lastly submits that the petitioner is in custody for the last more than two years; she is a lady and, therefore deserves a concessional tilt in her favour, being a woman. Otherwise also, she has to take care of her two young daughters.

Arguing for Suresh Kumar accused, Mr. Jamwal submits that against him also, there is no evidence, much less convincing evidence. He has been charged for kidnapping of Nitin Sharma (since deceased), primarily on the ground that he was driver of the police car bearing Number JK-01F-1117, which was allotted to Karnail Singh, SSP. Dwelling upon his arguments, Mr. Jamwal then submits that the police has presented challan against him under Section 364/120-B RPC, whereas the Court had charged him under Section 302 RPC also along with the aforesaid two Sections. According to him, the evidence collected by the prosecution does not make out a case even for Section 364 RPC and, therefore, the petitioner has also knocked the door of this Court against the order

of charge in which notice has already been issued. On the basis of the aforesaid submissions, Mr. Jamwal prays for the concession of regular bail.

Both the Bail Applications have been opposed by Mr. Salathia vehemently, submitting that not only the motive qua the petitioner and her husband Karnail Singh, who was SSP at the time of occurrence, is very strong in this case, viz., to eliminate Nitin Sharma, who had developed relations with their daughter, the present petitioner is the person, who was behind the curtain. Mr. Salathia then submits that the husband of the petitioner was posted at Rajouri and the official car allotted to him (used in the present case) was virtually under the control of the petitioner, who was staying at Jammu only.

Mr. Salathia then submits that the present case is not to be seen in isolation qua the petitioner, that too on the basis of the evidence of aforesaid two witnesses, namely, Sukhchain Singh and Pem Dass. Rather, it needs to be appreciated in its totality and once it is scanned in its right perspective, it speaks volumes of the involvement of the present petitioner along with her husband in the commission of the alleged offence, as both had thought of those evil designs and, ultimately brought their own employees attached to them, namely, driver Suresh Kumar and SPO Naresh Kumar into service and finally, the other four persons were hired for

assassination. According to him, it is a case of ‘Supari Killing’ and needs to be dealt with sternly.

Mr. Salathia then submits that another material fact, which cannot be just lost sight of is that Karnail Singh (the then SSP), who has taken in custody in this case along with the petitioner sought bail on the ground of ill-heath. He was granted concession of interim bail on 05-10-2006 initially for a very short period. However, he moved a subsequent application for extension of his bail and the same was allowed by the learned Principal Sessions Judge, Jammu, for one month’s period effective from 14-10-2006 with a direction to him to inform the date of surgery, which was to be done at Batra Hospital, New Delhi. Thereafter also, he moved another application yet for another extension and vide order dated 13-11-2006, it was again extended for 20 days. On 28-12-2006, he again sought extension of bail by producing medical certificate, in which rest was advised to him. The Court concerned again extended it for five weeks. Another order was passed on 20-02-2007 vide which the bail was again extended upto 26-02-2007. This all went upto 9th of July, 2007 when ultimately the learned Principal Sessions Judge, Jammu, extended the bail to Karnail Singh accused till further orders. Mr. Salathia wants to place on record the certified copies of the orders in this regard, to which Mr. Sethi has no objection (taken on record).

Mr. Salathia submits that virtually Karnail Singh, husband of the petitioner, is on bail since October, 2006 and interestingly the statements of the material witnesses, on which Mr. Sethi is relying heavily, have been recorded during this period only. Statement of Constable Sukhchain Singh is recorded on 18-10-2006, whereas statement of aforesaid Prem Das has been recorded on 02-11-2007 and the statements of Head Constable Sudershan and Constable Subash Chander (PWs 22 and 24) have been recorded on 01-11-2007. Aforesaid two police officials, according to the prosecution case, were posted as Security Guards at the residence of SSP Karnail Singh at Jammu and in their statements recorded under Section 161 Cr.PC, they had stated that the official car allotted to aforesaid Karnail Singh, SSP, went to Rajouri carrying the petitioner and when it came back, its number plate was changed. However, they did not support the case of prosecution during trial on this aspect. Evidence of Prem Dass, according to Mr. Salathia, no doubt was very important piece of evidence for the prosecution, but he did not support the case of the prosecution. But this all has happened during the period when SSP Karnail Singh, the husband of the petitioner, was enjoying bail under the garb of the interim orders, which he availed from time to time on the basis of his ailment. This by itself is a very important fact to say that he was pressurizing the witnesses including the police officials, who were

under him at one stage, not to depose against them and he was successful also. This in turn amounts to tampering with the evidence of the prosecution. According to Mr. Salathia, not only this fact alone can be considered sufficient for the rejection of the bail application of Ratno Devi, petitioner, even the trial Court be directed to reconsider the case of her husband, who is on bail.

Opposing the Bail Application of Suresh Kumar, petitioner, Mr. Salathia submits that he too had actively participated in the commission of the offence under the direction of the main accused (Karnail Singh and Ratno Devi) and, therefore, not entitled to concession of the relief sought for.

After hearing the rival contentions of the either side and going through the records, what appears to me is that Mr. Sethi wants me to comment upon the evidence already recorded by the trial Court. I, however, refrain from expressing any opinion on merits of the case, as it would prejudice the trial, which is already in progress and this exercise is to be left to the trial Court only. However, keeping in view the totality of facts and circumstances, especially the development which has taken place during the last 13/14 months when the husband of Ratno Devi, petitioner, was on bail, in my considered view, she does not deserve the concession of bail. Resultantly, her Bail Application No.67/2007 is dismissed.

At the same time, I do not find any substance in the submissions of Mr. Jamwal qua Suresh Kumar, petitioner, the co-accused and he too does not have any case for bail. Resultantly, his Bail Application No.94/2007 is also declined.

I request the learned trial Judge to make all sincere efforts to conclude the trial at the earliest, after 10th of December, 2007, the date already fixed.

So far as the husband of the petitioner being on interim bail is concerned, it would not be proper for me to comment upon the order vide which he has been given this concession till further orders. However, the State is at liberty to ask for the re-consideration/cancellation of the said order by moving a formal application in this regard. In case such an application is moved, the same would be decided by the learned trial Judge on any material placed before it by the State.

Trial Court records be remitted forthwith to the Court concerned before the next date, i.e., 10-12-2007, may be by special messenger.

**JAMMU
01.12.2007
T.Arora, PS**

**(Virender Singh)
Judge**