

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

B. A. no. 55/2009

Date of Decision: 16.11.2009

Tirath Singh & Ors Vs. State and anr

Coram:

HON'BLE MR. JUSTICE SUNIL HALI, JUDGE.

Appearing Counsel:

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| For the Petitioner(s): | Mr. D. S. Thakur, Advocate. |
| For the Respondent(s) : | Mr. B. R. Chandan, Dy. A.G. |
| i) Whether to be reported in Press, Journal/Media : | Yes |
| ii/ Whether to be reported in Digest/Journal : | Yes |

Petitioners are facing trial before learned Principal Sessions Judge Ramban for offences punishable under Sections 302/109/34 RPC. An application for grant of bail, during the pendency of the trial, was filed by the petitioners before the trial Court, which was rejected vide order dated 16.04.2009. It is under these circumstances that present application for bail has been filed by the petitioners before this Court.

In order to understand the controversy involved in this petition, certain facts are required to be enumerated.

A report was lodged before Police Post Ramsoo by Keshav Ram and Gandharb Singh, both nephews of deceased

Mathra Singh on 14.12.2006 wherein it was alleged that on the intervening night of 13/14 December, 2006, when the complainants had gone to attend marriage of one Shadi Lal's daughter in village Senabathi tehsil Banihal, and deceased Mathra Singh was alone at his house, he appears to have died under suspicious circumstances and his dead body was found lying on the road side about 100 yards away from his house. On filing of the report, police proceeded under Section 174 Cr.P.C after conducting the post mortem of the deceased. No FIR could be lodged as there was no direct or in-direct circumstantial evidence leading to the cause of the death of the deceased. On 21.05.2008 a written complaint was lodged by one Bharath Singh son of deceased Mathra Singh, alleging that one Ghulam Hassan S/O Assadullah has seen the accused persons dragging the dead body of the deceased. No other eye witness was cited in the said complaint by the complainant. Statement of Ghulam Hassan was recorded under Section 164 Cr.P.C before learned Magistrate, where he is stated to have said that the alleged accused persons were seen dragging the dead body of the deceased on the intervening night of 13/14 December, 2006. It is stated that after filing of complaint on 21.05.2008 by Bharat Singh, one more eye witness was inserted, namely, Bharat Singh S/O Kamal Singh, nephew of

the deceased whose statement was also recorded on 03.06.2008.

On filing of the FIR, investigation in the matter was concluded and report under Section 173 Cr.P.C was filed before learned Sessions Judge Ramban. The trial in the case is underway and ten witnesses have been examined by the prosecution.

The crux of the allegations against the accused persons is that accused Rita Devi is stated to have resisted the advances of deceased Mathra Singh as a result of which she left her house and instigated her parental relations to kill him. The deceased is stated to have been killed by the accused persons in his house as he was all alone on the intervening night of 13/14 December, 2006. Even though there is no eye witness to the actual occurrence but two witnesses, namely. Ghulam Hassan and Bharat Singh S/O Kamal Singh are stated to have seen the accused persons dragging the dead body of the deceased. One of the accused persons Kahan Singh is reported to be armed with a Kulhadi.

Admittedly there is no witness who has seen the actual killing of the deceased by the accused persons. The presence of the accused persons near the dead body and one accused

person being armed with a Kulhadi, is a circumstance which is related to be linking the accused with the crime.

After the examination of the material witnesses an application for grant of bail was filed before learned Sessions Judge Ramban for bail on the ground that there are no reasonable grounds to believe that the accused persons have committed the crime.

I have heard learned counsel for the parties.

Undoubtedly, the case is based upon circumstantial evidence. The presence of the accused persons near the dead body and its dragging, as witnessed by Bharat Singh S/O Kamal Singh, Ghulam Hassan and Keshav Ram, is the chain which links the accused persons with the commission of the crime.

In order to examine the culpability of the accused persons with the commission of the crime, following circumstances have emerged, which, according to the petitioners, are sufficient to disbelieve the prosecution story:-

A/ First Information Report lodged by Keshav Ram and Gandharb Singh on 14.12.2006, after the dead body was recovered, does not mention the names of present petitioners, nor any eye witness.

B/ Filing of FIR by Barath Singh son of deceased Mathra Singh on 21.5.2008, alleging that the

deceased was killed in his house when he was all alone and the dead body was dragged by the accused persons was witnessed by Ghulam Hassan, has not been corroborated by the said witness while being examined by the trial Court. He has categorically denied that he has seen the act of the accused persons of dragging the dead body.

C/ Statement of Barath Singh S/O Kamal Singh, who was not initially named in the FIR by the son of the deceased, is unbelievable and un-natural in its effect. His statement is that he saw the accused persons dragging the dead body of the deceased but has not disclosed it to anybody. He is stated to havd visited the marriage of Shadi Lal's daughter. He has not even disclosed the incident to his father who was in the house at that time. The fact that his name did not figure in the FIR filed by the son of the deceased also creates doubts in his testimony.

D/ Statement of Keshav Ram who has lodged the FIR, in which he does not mention the name of accused nor does he disclose this fact that he has seen the accused persons near the dead body on the date of occurrence, relates a different story during the

course of trial indicating to have seen the accused near the body of the deceased.

E/ The weapon of offence admittedly has not been recovered nor does the postmortem report indicate the cause of death.

The considerations which normally weigh with the Court in the matter of granting bail in non-bailable offences, basically relates to the nature and seriousness of the offence; the character of evidence; the circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of the witnesses being tampered with the larger interest of the public, are the factors which may be relevant in the facts and circumstances of the case. It be also noted that discretion to grant bail given to this Court under Section 498 Cr.P.C is not fettered in terms by the restrictions contained in Section 497. If there are reasonable grounds for believing that a person is guilty of an offence punishable with death or imprisonment for life, this Court or the Court of Sessions will not grant bail to such a person. Whether there are reasonable grounds to believe that a person is guilty of an offence depends upon the evidence which is used against him In order to come to the conclusion that a person is guilty, the Court must

consider the nature and the character of the evidence and, in case, on consideration of such evidence, the Court *prima facie* comes to the conclusion that the evidence against the person is not such that he has committed the offence, then, in the normal course, the said person is entitled to bail.

Applying this principle to the present case, there is no dispute that the accused have been charged for offences punishable under Sections 302/109/34 RPC. However, the continuance of the accused in the custody will be relatable to the nature and character of the evidence and the probabilities of getting conviction on the basis of the said evidence.

The case against the petitioners, as enumerated above, is based on circumstantial evidence. The circumstance which links the accused with the crime is that they were found dragging the dead body of the deceased, which has been witnessed by two witnesses, namely, Ghulam Hassan and Bharat Singh. Ghulam Hassan has already denied the occurrence whereas statement of Bharat Singh assumes significance. The statement of Bharat Singh has to be appreciated in the light of his conduct after he has stated to have seen the dead body of the deceased being dragged by the accused persons. The following things emerge from his statement:-

- a/ That after he has witnessed the dead body of the deceased being dragged by the accused persons, he remained confined to his room for two hours and did not disclose the incident to his father who was present in the house.
- b/ On the same night he is stated to have visited the house of Shadi Lal, where it is stated that 250/300 guests were present. He did not disclose the incident even to them also.
- c/ he did not disclose the incident to the complainant Barath Singh, the son of the deceased, but reported the matter on the next day to the Chowkidar.

What emerges from the aforementioned statement, it is clearly evident that the conduct of the witness was un-natural and un-reasonable. He was closely related with the deceased being his nephew. Statement of this witness creates serious doubt regarding the truthfulness of the witness.

Petitioners have placed reliance on *Din Dayal v. Raj Kumar alias Raju and others*, reported as AIR 1999 SC, 537, where it has been held that:

む Appreciation of evidence- Eye-witnesses closely connected with deceased ま Did not accompany deceased to hospital nor had informed police about incidence ま Their conduct is unnatural ま One of the eye witnesses who was close relative of deceased

and who had accompanied deceased to hospital also did not disclosing name of accused to police । Creates serious doubt regarding truthfulness of evidence of eye-witness । Order of acquittal of accused is proper.।

The other aspect is that Keshav Ram had filed the first information report on 14.12.2006 in which he does not name the accused persons. Even in his statement before the trial Court, he shows the awareness that the accused persons have committed the crime but did not disclose the same when he files the first information report before the police. This, in my opinion, entitles the accused persons to grant of bail at this stage.

The nature of accusations, as has come on record, reveals that the complicity of the accused in committing the crime cannot be, at this stage, considered to be foolproof.

In these circumstances and without commenting on the merits of the case, I direct that petitioners, except petitioner Kirpa Ram, shall be enlarged on bail for a period of three months, subject to their submitting bail bonds in the amount of Rs. 25,000/- each to the satisfaction of learned Sessions Judge Ramban with one surety each of the like amount. Petitioner-Kirpa Ram shall also be granted bail till conclusion of the trial, subject to his furnishing bail bond in the amount of Rs. 25,000/- to the satisfaction of learned Sessions Judge Ramban with one

surety of the like amount, as he is stated to be above 72 years and falls within expression 497(1). The interim bail is granted to the petitioners with following directions:-

1. That they will not intimidate or harass the complainant party and the witnesses who are yet to be examined;
2. That they will not leave the territorial limits of District Ramban during this period;
3. That they will regularly attend the trial before the trial Court.

If any complaint is filed against the petitioners regarding intimidation to the witnesses or the complainant party, the trial Court will be well within its powers to review this order and, if facts and circumstances so require, cancel the bail of the petitioners.

4. After expiry of three months the trial Court will examine the extension of the bail in favour of the petitioners, if any fresh material is brought on record by the remaining witnesses who are yet to be examined. In case no such material, implicating the petitioners in the crime, is brought on record, the trial Court can extend the bail of the petitioners till conclusion of the trial.

Bail Application is, accordingly, disposed of.

Record of the trial Court be sent back forthwith.

(SUNIL HALI)
Judge

JAMMU:
16.11.2009
Anil Raina, Secy.