

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

ORIGINAL JURISDICTION

Dated: Nainital: the 29th day of January 2009

Ist Bail Application No.72 of 2009

Order on the Bail application of accused.

CRIMINAL SIDE

Sushil Deshwal S/o Rudemal

R/o Ramlila Tila

P.S. Kotwali Muzaffarnagar

District Muzaffarnagar

....Applicant (In Jail)

Versus

State of Uttarakhand

.....Opposite party

Dated: January 29, 2009

Arising out of Case Crime No.372/2007

Under Sections 302, 34, 120-B IPC

P.S. Kotwali Haridwar, District Muzaffarnagar

Hon'ble Dharam Veer, J.

Heard Sri S.K. Shandiliya, learned counsel for the applicant and Sri S.S. Adhikari, learned A.G.A. for the State.

In brief, the prosecution case is that Harbir Singh was a caretaker of the land of Subhash Saini since last 15 years before the incident in question. Inder Sharma, Sanjeev @ Jeeva (who was in jail) and Nagendra Brahmchari wanted to grab the aforesaid land and Harbir Singh was stopping them

to do so. The above-said persons also threatened to Harbir Singh to his life at several times for the same reason. On 13.07.2007 at about 7:30-8:00 P:M, when Harbir Singh was sitting outside his house along with Subhash Saini in a chair and the complainant Smt. Saroj Devi (wife of Harbir Singh) was also standing near the door, meanwhile Inder Sharma and Nagendra Brahmchari along with one unknown person came on the place of occurrence from the side of doctor's shop. After seeing Harbir Singh, Inder Kumar Sharma and Nagendra Brahmchari has asked their third companion (unknown person) that he is Harbir Singh who is to be murdered. After this exhortation by Inder Sharma and Nagendra Brahmchari, the said unknown person fired on Harbir Singh due to which he fell down in the gallery and these accused persons ran away towards Royal Hotel. Then Harbir Singh was taken to the hospital by Subhash Saini and Sanjeev (son of deceased Harbir Singh) where he was declared dead. It was further averted in the F.I.R. that Sanjeev @ Jeeva in conspiracy with Inder Sharma and Nagendra Brahmchari, have got committed the murder of Harbir Singh with the help of a criminal in order to grab the land in question. With the same averments, the F.I.R. was lodged by Smt. Saroj Devi on 13.07.2007 at 08:40 P:M at P.S. Kotwali Nagar Hardwar, Distt. Hardwar.

Learned counsel for the applicant submitted that the applicant is not named in the FIR and even no specific role has been assigned to the applicant in the FIR. He further

submitted that the applicant is in jail since December 2007 and there is no evidence collected by the Investigating Officer so as to connect him with the present crime. Learned AGA has submitted that co-accused Anuj Tyagi has given his statement to the I.O. in which he has disclosed the name of three persons namely Amit Malik, Abhishek Sharma @ Ravi and Sushil Deshwal, to whom money and weapon for shooting the deceased was supplied by him. This witness further stated in his statement that he is not aware that who has committed the murder of deceased out of the aforesaid three persons.

Learned counsel for the applicant further submitted that the applicant/accused has not been identified by the witnesses in jail and even no identification parade was conducted by the I.O. He further submitted that co-accused Anuj Tyagi and Sunil Sharma have been released on bail. He further submitted that co-accused Amit Malik and Abhishek Sharma @ Ravi have also been released on bail by this Court vide order dated 27.11.2008 and 15.12.2008, respectively and the present applicant is also entitled for bail on the basis of parity.

From the evidence collected by the I.O., it reveals that the role of co-accused namely Amit Malik and Abhishek Sharma @ Ravi and the present applicant is similar as shown by the I.O. This point is also conceded by learned A.G.A. for the State. It was further admitted by the counsel for both the parties that the identification parade of the applicant/accused was not

conducted by the prosecution agency during the investigation and the trial of the case has yet not been completed.

After considering all the facts and circumstances of the case, without expressing any opinion about the final merits of the case, the Court is of the view that the present applicant deserves bail at this stage.

Let the applicant-Sushil Deshwal be released on bail on his executing personal bond and furnishing two sureties each in the like amount to the satisfaction of C.J.M, Hardwar.

(Dharam Veer, J.)

Vacation Judge

29.01.2009

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