

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P. (M) No. 715 of 2021

Reserved on: 17.6.2021

Date of decision: 30.6.2021

Tikam Singh.

...Petitioner.

Versus

State of Himachal Pradesh.

...Respondent.

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner: Mr.Manoj Pathak, Advocate, through Video Conferencing.

For the Respondent: Mr.Gaurav Sharma, Deputy Advocate General, through Video Conferencing.

S.I. Rajinder Singh, SHO Police Station Bhawanagar, present in person along with record.

Vivek Singh Thakur, Judge

Petitioner is an accused in case FIR No. 83 of 2020, dated 7.11.2020, registered in Police Station Bhawanagar, District Kinnaur, H.P. under Sections 302, 177, 182, 201, 203, 193, read with 120(B) IPC. Petitioner after remaining in Police custody is now in judicial custody. He has approached this Court seeking regular bail.

2. Status report stands filed. Record has also been produced.

3. Perusal of status report as well as record reveals the prosecution story that on 6.11.2020 deceased Sunil Kumar was murdered by Shashi Kumar with a knife supplied by co-accused Raju Nepali in presence of petitioner Tikkam Singh and thereafter Tikkam

Singh tried to mislead the Police after approaching Police Station Bhawanagar by making statement under Section 154 Cr.P.C. that Raju Nepali had murdered Sunil Kumar.

3. On the basis of statement made by petitioner Tikkam Singh, case under Section 302 IPC was registered and co-accused Raju Nepali was arrested on 7.11.2020 and on that date his Medico Legal Examination was conducted and that of petitioner Tikkam Ram and his companion Shashi Kumar was also conducted in CHC Bhawanagar and their blood and urine samples as well as clothes were also preserved and taken into possession for chemical analysis.

4. On 8.11.2020, father of deceased Sunil Kumar had submitted an application to the Police, suspecting involvement of petitioner Tikkam Singh and Shashi Kumar along with Raju Nepali in murder of his son Sunil Kumar by stating that earlier also Shashi Kumar had quarreled with his son and had threatened to kill his son and he number of times had been stopping the vehicle owned by his son. After collecting evidence and recording statements of witnesses, Shashi Kumar and Tikkam Singh were also arrested on 9.11.2020.

5. As per prosecution story, during investigation, circumstances in which offence was committed revealed that on 6.11.2020, Shashi Kumar had been inviting Sunil Kumar to consume liquor together, but Sunil Kumar, to avoid him, had stated that he was at Tapri at that time. Shashi Kumar and Raju Nepali had been consuming liquor in the vehicle of Shashi Kumar and Shashi Kumar had asked Raju Nepali to help him to kill a local person to which Raju Nepali had disagreed, but on asking of Shashi Kumar, Raju Nepali had supplied a knife to Shashi Kumar from his room.

6. As per prosecution case, deceased Sunil Kumar on 6.11.2020, after leaving a passenger in his taxi at Bhawanagar had come to Lutuksa and had consumed liquor along with Rakesh Roshan, Akshay and Asif Khan and there he had received a call from Shashi Kumar at 7:33 P.M. asking to join him, but Sunil Kumar had refused to join company of Shashi Kumar to have liquor and at 8:00 P.M. he had started from Lutuksa to his home situated in village Kache. At Palangi Mode (curve), Sunil Kumar met Tikkam Singh and Dabinder Singh, residents of Kangos, who were taking liquor in the vehicle of Tikkam Singh and Sunil Kumar also parked his vehicle there and started taking liquor in the vehicle of Tikkam Singh and by that time Shashi Kumar along with Raju Nepali also reached there from his village Kache and he also consumed a peg in the vehicle of Tikkam Singh and thereafter Dabinder Singh left for his home and Shashi Kumar asked Sunil Kumar and Tikkam Singh to wait for him at that place i.e. Palangi Mode and he (Shashi Kumar) along with Raju Nepali went Bhawanagar to bring liquor, but Tikkam Singh and Sunil Kumar, instead of staying at Palangi curve, went towards their home. After purchasing liquor at Bhawanagar, Shashi Kumar along with Raju Nepali started to Palangi Mode and during this time Shashi had made calls to Tikkam Singh at 8:42, 8:46 and 8:48 P.M. and also to deceased Sunil Kumar at 8:47 P.M. After reaching Palangi, Shashi Kumar and Raju Nepali consumed one peg each of liquor and on that place Shashi had asked Raju Nepali to help him to kill a local person. At 9:01 and 9:11 P.M., Tikkam Singh contacted Shashi Kumar on his mobile and at about 9:15 P.M. Shashi Kumar and Raju Nepali had reached at village Kache and Tikkam Singh and deceased also met them near the house of Ram

Bhagti and from that place Tikkam Singh drove the vehicle of Shashi Kumar, whereas Sunil Kumar and Shashi Kumar sat on the back seat and stopped the vehicle near Primary School Kache at a place having sufficient space, where all of them consumed liquor in the vehicle and when Sunil Kumar came out of the vehicle to urinate, Shashi Kumar also came out and Raju Nepali also left the vehicle to go home, who was overpowered by Shashi Kumar outside the vehicle and Shashi Kumar started altercation with him, whereupon Sunil Kumar tried to intervene and at that time Shashi Kumar had attacked Sunil Kumar with knife inflicting deep cut on his neck and on seeing it Raju Nepali tried to run away from the spot, but he was overpowered by Shashi, whereupon Raju Nepali had raised hue and cry and on hearing the noise Tikkam Singh also came out of the vehicle and he noticed that Sashi Kumar was having a knife in his hand and was trying to stop Raju Nepali from fleeing from the spot, whereas Sunil Kumar was lying on the ground and his neck was bleeding profusely. Tikkam Singh by taking neck of deceased on his arm had tried to talk with him, but Sunil Kumar had succumbed to injuries. During this time, Raju Nepali had succeeded to take the knife from Shashi Kumar and had run towards his quarter, but Shashi Kumar had apprehended him at a small distance near house of Malsukh and had tried to snatch the knife from Raju Nepali, which was kept by him in his pocket and during this scuffle tip of knife had injured right thigh of Raju Nepali, which fact has also been corroborated in the MLC.

7. As per prosecution story during that time, one Dr. Anand along with his wife was coming from IGMCH, Shimla, had also seen Shashi Kumar near house of Malsukh, overpowering Raju Nepali and

at a small distance thereafter, they had noticed blood and body of Sunil Kumar and thus he had stopped his vehicle, whereupon petitioner Tikkam Singh had come from back side of the vehicle and on inquiry he had disclosed to Anand that Shashi, deceased Sunil Kumar and Raju Nepali had come out of the vehicle and thus he was not having knowledge that what had happened.

8. According to statement of Dr. Anand, at that time Tikkam Singh was busy in calling someone and on inquiry as to whether Police has been informed or not, Tikkam Singh remained busy to make call(s) to someone. Wife of Dr. Anand had undergone minor surgery for removing dead gland from her breast and for bleeding she was requiring urgent dressing and thus thinking that he had been calling the Police, they left the place and went home but at home discussed it with mother and nephew of Dr. Anand.

9. As per prosecution story, Shashi Kumar had threatened Raju Nepali that in case he would disclose the incident to anyone, then Shashi would kill him and his wife. Tikkam Singh was continuing to call Shashi Kumar, but Shashi Kumar did not pick up his call, whereupon Tikkam Singh started on foot towards house of Sunil Kumar and during that time he received call from Shashi Kumar, who advised him not to tell the incident to anyone but to say that Sunil Kumar was killed by Raju Nepali. Whereupon Tikkam Singh started in his vehicle to go his in-laws house at Rekongpeo and had telephoned to his wife, who advised him to inform Naresh Kumar, brother of deceased Sunil Kumar, on his mobile, but on calling Naresh Kumar on a number available with Tikkam Singh, this number was found to be belonging to some another Naresh Kumar but not brother of Sunil

Kumar. During this, Tikkam Singh contacted his parents and other relatives and Shashi Kumar also and thereafter he reported the incident to Police in Police Station, Bhawanagar at 11:36 P.M. by concocting a story that a quarrel had taken place between Raju Nepali and Sunil Kumar and murder of Sunil Kumar has been committed by Raju Nepali with some sharp weapon.

10. After receiving application from father of deceased Sunil Kumar and after collecting evidence from the spot as well as recording evidence of witnesses and interrogation of Raju Nepali and Tikkam Singh, it was revealed to the Investigating Agency that Shashi Kumar had attacked Sunil Kumar with knife provided by Raju Nepali and Sunil Kumar had also tried to overpower Raju Nepali. As per status report, it is prosecution case that Tikkam Singh had conspired with Shashi Kumar to save Shashi Kumar and to implicate Raju Nepali alone for murdering Sunil Kumar and with intention to mislead the Police, he had come to the Police Station and had lodged a false report.

11. Learned counsel for the petitioner has submitted that even if prosecution story is believed to be true as such, then also it is evident that petitioner Tikkam Singh was neither involved nor intended to murder deceased Sunil Kumar, rather he was sitting on the driving seat unaware of the happening outside the car and even after death of Sunil Kumar, he did not flee from the spot immediately, but had tried to talk with Sunil Kumar and when Sunil Kumar did not respond, then he did not leave the spot immediately and after leaving the spot had disclosed the incident to his wife, parents and other near and dears and instead of running from the spot had reported the matter to the Police. He further submits that petitioner was perplexed and was not

in a stable state of mind and his first move was to inform victim's family and thus he had started for victim's house but at that moment he had received call of Shashi Kumar who had prevented him to do so and had guided him in his own way. The petitioner, who was indecisive at that time, had followed the suggestion of Shashi Kumar who had suggested to implicate Raju Nepali only.

12. It has been further submitted on behalf of petitioner that petitioner was not knowing that what had happened outside the Car and the said fact has been duly corroborated in the statement of Dr. Anand and his wife, who in unequivocal terms have stated that Tikkam Singh came from back side of the car and on asking he replied that he was sitting in the car and did not know what actually happened. According to learned counsel for the petitioner, it was not possible for the petitioner to know the actual incident which had happened outside the car and as Raju Nepali was trying to flee from the spot and Shashi Kumar was trying to overpower him, then in a normal course anybody on the spot who had not noticed the incident with his own eyes, would have inferred that it was Raju Nepali who murdered Sunil Kumar and Shashi Kumar was trying to overpower him and, therefore, statement of Tikkam Singh in the Police Station for recording FIR was based on the information supplied by Shashi Kumar and, therefore, Tikkam Singh could not be blamed for making a false statement. It is further submitted on behalf of petitioner that Tikkam Singh had categorically stated that he had taken the neck of deceased Sunil Kumar on his arm and had tried to talk with him, therefore, it is contended that blood of deceased Sunil Kumar on pants, jacket, shirt and shoes is not revealing the offence by Tikkam Singh, but innocence of Tikkam Singh,

as it is an admitted fact that he tried to have talks with Sunil Kumar by taking him on his arm.

13. In status report, it is stated that challan under Sections 302, 201, 193 and 120(B) IPC has been presented against co-accused Shashi Kumar and under Sections 302, 120 (B) IPC has been presented against co-accused Raju Nepali, whereas against petitioner challan under Sections 177, 182, 193, 201, 203 read with sections 302 and 120(B) IPC has been presented. Taking support from the aforesaid fact, learned counsel for the petitioner has submitted that maximum sentence which may be imposed upon the petitioner under Sections 177, 182, 193, 201, 203 IPC would be 7 years, as the petitioner has not been found to be accused for commission of offence which provide life sentence or capital punishment and at the most petitioner can be punished for the above referred offences, for which challan has been presented against petitioner Tikkam Singh and, therefore, considering the possibility of quantum of sentence which may be imposed upon the petitioner, prayer has been made to enlarge the petitioner on bail.

14. It is also stated in the status report that during investigation Raju Nepal and Tikkam Singh had cooperated with the Police and disclosed everything during their interrogation. However, Shashi Kumar did not cooperate and did not disclose anything and, therefore, his Narco Analysis test was proposed and an application to this effect was also filed before Chief Judicial Magistrate, Kinnaur at Rampur, but Shashi Kumar had refused to undergo Narco Analysis Test. It is apparent from the record produced that role of Tikkam Singh cannot be equated with the main accused. Whether petitioner was a

member of team conspiring to murder Sunil Kumar or he was present on the spot by chance or whether the petitioner was having knowledge of fact that blow of knife on the neck of deceased Sunil Kumar was inflicted by Shashi Kumar or not, are the facts which are to be established on record, considered and decided by the trial Court by evaluating material before it in accordance with law. However, for the facts mentioned in the status report, I find that role of petitioner Tikkam Singh can be segregated from the role of other co-accused. Therefore, he may be enlarged on bail at this stage.

15. Accordingly, petitioner is ordered to be enlarged on bail, subject to furnishing personal bond in the sum of ₹1,00,000/- with one surety in the like amount to the satisfaction of trial Court/concerned Magistrate within a period of two weeks from today and also subject to following further conditions:-

- (i) *That the petitioner shall make himself available to the police or any other Investigating Agency or Court in the present case as and when required;*
- (ii) *that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to Court or to any Police Officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;*
- (iii) *that the petitioner shall not obstruct the smooth progress of the investigation/trial;*
- (iv) *that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;*
- (v) *that the petitioner shall not misuse his liberty in any manner;*
- (vi) *that the petitioner shall not jump over the bail;*
- (vii) *that the petitioner shall keep on informing about the change in address, landline number and/or mobile number, if any, for his availability to Police and/or during trial;*

(viii) *that the petitioner shall not leave India without permission of the Court.*

16. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner as deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

17. In case the petitioner violates any conditions imposed upon him, his bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

18. Learned trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

16. Observations made in this petition hereinbefore shall not affect merits of the case in any manner and are strictly confined for the disposal of the bail application.

19. The petitioner is permitted to produce copy of order downloaded from the High Court website and the trial Court shall not insist for certified copy of the order, however, it may verify the order from the High Court website or otherwise.

The petition stands disposed of in the aforesaid terms.

Dasti copy on usual terms.

30th June, 2021
(Keshav)

(Vivek Singh Thakur),
Judge.