

HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Bail Application No. 8 of 2021

Nawab

...Applicant

Versus

State of Uttarakhand

....Respondent

Present:-

Mr. S.P.S. Panwar, Senior Advocate appearing for the applicant through video conferencing.

Mr. S.S. Adhikari, Deputy Advocate General with Mr. Lalit Miglani, A.G.A. for the State.

Mr. S.K. Shandilya, Advocate appearing for the informant through video conferencing.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant Nawab is in judicial custody in Case Crime No. 503 of 2018, under Section 302, 307, 323, 504, 34 and 120B IPC, Police Station Manglaur, District Haridwar. He has sought his release on bail.

2. Heard learned counsel for the parties.

3. According to FIR, on 19.08.2018, when the informant visited his godown at 11:45 PM he found the applicant and others standing there. On questioning, the applicant and his associates started abusing and beating him. At it, when the informant raised alarm, his brother Omveer and Sukhram Pal reached there. They were also assaulted by the applicant and others. The co-accused, according to the case, caught hold of Omveer and Sukhram Pal and at the exhortation of the co-accused Shamshad, the applicant fired at the stomach of the deceased Sukhram Pal and he also fired at Omveer. Omveer and Sukhram Pal were taken to the hospital, where Sukhram Pal was declared brought dead and Omveer was referred to higher centre. The first bail of the applicant has already been rejected by this Court on 20.07.2020.

4. Learned senior counsel for the applicant would argue that there are serious issues which require adjudication by this Court in this second bail application because according to him, many facts were not brought to the notice of the Court, when the first bail application was argued. He would submit that in fact on the date of incident it is the deceased, informant and a Sandeep, who mercilessly and indiscriminately assaulted the applicant, due to which he sustained multiple injuries. They were twenty in number, out of which, many were referred to Surgeon. It is also submitted that in fact, the medical examination of the applicant was got conducted by the Police because the Police had arrived at the place of occurrence about 15 minutes after the alleged incident. The revolver of the applicant was taken by police in their custody. But, it is argued that the police did not act as per the medical advice. Learned senior counsel raised following points in his arguments:

1. On behalf of the applicant, a report was given to the police soon after the incident i.e 30.08.2020, but police did not lodge the report. When the applicant approached the court of competent jurisdiction under Section 156 (3) of the Code of Criminal Procedure, 1973, his application was rejected, but finally allowed in the revision on 07.11.2019 and thereafter, a report under Sections 147, 148, 323, 504 was lodged against the applicant and others, in which, after investigation, charge sheet under Section 323, 504, 506 has been submitted.

2. The investigation has not been fair. There were fractures on the applicant. The police did not get expert opinion of Surgeon with regard to various injuries which were noted in the medical examination of the applicant. The applicant has been denied fair investigation.

3. Bail is not a pre-trial conviction. Applicant is not able to defend his case.

4. The applicant had received twenty injuries at the hands of informant and his associates. They would have killed the applicant, had the applicant not fired in his self-defence. But, it is argued that due to being in custody the applicant is not able to defend him.

5. The informant, deceased and injured Omveer did not receive any other injury except firearm wounds on two of them.

5. According to learned senior counsel for the applicant, it is the applicant who was mercilessly beaten by the informant and his associates. Soon after the FIR was lodged against the applicant, it is submitted that next day police station was *Gheraoed* by the informant and others, of which a report was lodged by the police and it had affected the fair investigation. Applicant is also not getting fair trial. On 30.03.2019, PW1 Veerpal was examined, but when the adjournment was sought it was allowed subject to costs. Referring to it, learned senior counsel would submit that it is a duty of the State to ensure that applicant gets fair trial.

6. Learned senior counsel referred to some statements of witnesses Kalla and Farman as recorded by the I.O. to argue that in fact the applicant's version is more probable. He was attacked. He was not aggressor. Whatever he did, he did in his defence. It is submitted that none of these contentions were considered by this Court while rejecting the first bail application. Hence, the applicant deserves to be enlarged on bail.

7. On behalf of the State, it is submitted that whatever arguments have been raised, they are based upon the factual aspects of the case and all these arguments were considered by this Court while rejecting the first bail application. No new ground has been made out to enlarge the applicant on bail.

8. On behalf of the informant, it is submitted that there are no change of circumstances, which may entitle the applicant to bail. All the pleas had already been taken in the first bail application.

9. In fact, this Court has considered various aspects of this case while rejecting the first bail application. The first bail rejection order, in fact, is quite in detail. It is true that specific pleas with regard to injuries or plea of self defence were perhaps not taken when the first bail application was filed. But, the fact remains that the plea with regard to cross-case was taken in the first bail application and the Court has taken note of it in para 8 of the first bail rejection order.

10. While the Court was dictating these lines, the learned senior counsel further brought it to the notice of the Court that the factum of injury and FIR lodged against the informant was not before the Court when the first bail application was rejected. It is true that at the time of rejection of the first bail application, the FIR against the informant and the others was not in existence. It is true that the injuries sustained by the applicant were not before this Court when the first bail application was rejected.

11. The plea of self-defence is something, which is required to be proved in trial. It depends on many things. Insofar the injuries caused on the accused are concerned, applicant along with his second bail application has filed medical examination report i.e. annexure 5, which reveals that there were 20 injuries on the person of the applicant on 19.08.18 at 11:30 P.M. and many of them were referred to the surgeon for expert opinion.

12. Learned State Counsel would submit that there is no report of the expert with regard to injuries. The injuries as revealed in this injury report are contusions, abrasions, contused swelling, diffused swellings, which according to the doctors were caused by hard and blunt objects. The doctor has also opined that changes suggestive of suspected supracondylar fracture.

13. In the instant case, there are specific allegations against the applicant that he fired twice. His first fire, which hit Sukhrampal and again he fired at Omveer, who sustained injuries. Now there are two fires vis-a-vis injuries on the applicant. What is the nature of injuries, how will they affect the prosecution case, there are catena of case laws, on that aspect. But, it again falls for scrutiny during trial. The injuries on the person of the accused may in some cases suggest that the prosecution has suppressed the genesis or the origin of the offence or there may be situation when in comparison to the offence committed by the accused, the injuries on him may be ignored or in some cases it may infer that the witnesses, who deny injuries on the person of the applicant are not reliable. As stated, it may be tested during trial.

14. Simply because there are injuries on the person of the applicant, at this stage, it cannot be said that the applicant was acting on his defence. Parties had disputes in the past. It is admitted. They had some property related dispute. One person was killed and one was injured due to firing done by the applicant. The applicant was in his *Dhaba*. If he was beaten so mercilessly, was there no other person around the *Dhaba*? Did not the worker at *Dhaba* intervene? These and many more questions would perhaps fall for discussion during trial.

15. Having considered the entirety of the facts, this Court is of the view that there is no reason to release the applicant on bail and the bail application deserves to be rejected.

16. The second bail application is rejected.

(Ravindra Maithani, J.)

30.07.2021