

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 10th MAY, 2016

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Bail Appln. No.03 of 2016

Petitioner/Accused : Rup Chandra Rai,
S/o Late Nar Bahadur Rai,
Aged about 64 years,
R/o Majhigaon, Jorethang,
P.O. & P.S. Jorethang,
South Sikkim.

[Presently under custody of the
Investigating Officer, Jorethang
Police Station, South Sikkim
and under treatment in STNM
Hospital, Gangtok, East Sikkim.]

versus

Prosecution/Respondent : State of Sikkim

Petition under Section 439 read with Section
482 of the Code of Criminal Procedure, 1973

Appearance

Mr. B. Sharma, Senior Advocate with Mr. R. P. Sharma and Mr.
Bhola N. Sharma, Advocates for the Appellant.

Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with
Mrs. Pollin Rai, Assistant Public Prosecutor for the State.

SI Jigme W. Bhutia, Investigating Officer, Jorethang Police
Station, in person.

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O R D E R (ORAL)

Meenakshi Madan Rai, J.

1. Learned Senior Counsel Shri B. Sharma while adverting to the facts submitted that the alleged incident took place on 18-01-2016 around 6 a.m. as per the statement of the victim's daughter made under Section 164 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") before a Judicial magistrate. The case was registered on the same date under Section 325 of the Indian Penal Code, 1860 (for short "IPC"), against unknown person. Later on the same date, on the victim succumbing to his injuries the matter was converted to Section 304 of the IPC. That even assuming but not admitting that the Petitioner had assaulted the victim leading to the victim's demise, the provision of Part II of Section 304 of the IPC is attracted as the Petitioner may have had 'knowledge' but had no 'intention' to cause the death of the victim.

2. In the next leg of the argument of Learned Senior Counsel, it was contended that it is now approximately 110 days since the lodging of the FIR consequent to which the Petitioner was arrested on 07-04-2016, however, till date no Charge-Sheet has been filed by the Investigating Officer (for short "the I.O."). To fortify this submission, he has placed reliance on ***Dipak Shubhashchandra Mehta*** vs. ***C.B. I. and Another***¹. He also canvassed the point that bail

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1. AIR 2012 SC 949

not jail is the Rule as laid down in *Sanjay Chandra* vs. *Central Bureau of Investigation*². That, the question of the Petitioner tampering with the evidence does not arise since the statements of the relevant witnesses have been recorded under Section 164 of the Cr.P.C.

3. Apart from the above submissions, he places strong reliance on the Petitioner's medical documents and submits that since February, 2016, the Petitioner has been beset with heart problems, i.e., unstable angina, added to which he is also suffering from hypothyroidism and anxiety disorder. He is under medication for his ailments and is being treated by a Neuropsychiatrist at STNM Hospital for depressive disorder. Submitting before this Court a Medical Report dated 04-05-2016 pertaining to the Petitioner, it is further contended that the said follow up Report of the Central Referral Hospital, Manipal, indicates that he is still suffering from unstable angina, hypertension and hypothyroidism and considering his condition, the family seek to take him for treatment outside Sikkim. Hence, taking into consideration the time taken by the Police to complete their investigation and in consideration of the above facts, it would only be fair to enlarge the Petitioner on bail on any stringent condition deemed fit by this Court.

4. *Per contra*, Mr. Karma Thinlay Namgyal, Learned Public Prosecutor, while vehemently objecting to the Application for Bail,

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2. (2012) 1 SCC 40

submits that a *prima facie* case exists against the Petitioner in view of the statement of witnesses recorded under Section 164 of the Cr.P.C. of which one is an eye-witness to the incident. That at this stage, the question of the specific offence being committed by the Petitioner under Section 304 Part I or Part II of the IPC does not arise as the merits of the matter are not being discussed. It is stated that the Prosecution has not been able to complete the investigation as the I.O. is still seeking out persons who had witnessed the incident and they apprehend that should the Petitioner be enlarged on bail he will tamper with evidence as he is an influential person of the locality being a retired Captain from the Army and well-known in the area. Besides the above, it is submitted that the Medical Reports of the Petitioner pertain only to the period after the incident. Prior to the incident, the Petitioner appears to have had no medical history thereby raising a suspicion of the authenticity of his ailments. That the nature of injury inflicted has led to death of the victim and, therefore, enlarging the Petitioner at this stage would thwart the ends of justice, hence, the Application be dismissed.

5. I have given due consideration to the rival submissions put forth by Learned Counsel. I have also gone through the records placed before this Court.

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6. What appears to be relevant for the purposes of this Application is that the incident took place on 18-01-2016 and the Petitioner was arrested only on 07-04-2016. During the interim period from 18-01-2016 to 07-04-2016 the Petitioner made no bid to abscond from Jorethang, South Sikkim, his home town, neither is there any allegation from the Prosecution that during the said period, he took steps to influence any person in the area who may have witnessed the incident. Hence, tampering with the evidence appears to be ruled out by the conduct of the Petitioner during the above period, consideration also being taken of the fact that the statements of three witnesses have been recorded under Section 164 of the Cr.P.C.

7. In ***Sanjay Chandra (supra)***, the Apex Court held that –

“**21.** In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”

8. Bearing the above in mind, attention may be drawn to the fact that the Prosecution has made no submission that they apprehend the absconsion of the Petitioner, in other words, the

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Prosecution does not apprehend that the presence of the Petitioner cannot be secured at the trial.

9. While considering the gravity of the offence committed by the Petitioner, it would be worthwhile to refer to the relevant portion of the decision in ***Sanjay Chandra (supra)*** wherein the Apex Court while discussing the case of ***State of Rajasthan vs. Balchand***⁸ held that –

“3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the petitioner in this case is that, while he has been on bail throughout in trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station at Baren once every fortnight.”

10. In the light of the above extract, in the instant case, it is an admitted position of the Prosecution that the Petitioner is well-known in the area. The submission of Learned Counsel for the Petitioner indicates that the Petitioner has a five storeyed building in the area and belongs to Sikkim thereby establishing that he has his roots here.

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3. (1977) 4 SCC 308

11. In the same judgment, i.e., *Sanjay Chandra (supra)*, the Apex Court while discussing *Babba* vs. *State of Maharashtra*⁴, *Vivek Kumar* vs. *State of U.P.*⁵ : and *Mahesh Kumar Bhawsingha* vs. *State of Delhi*⁶ :, observed that the Court had taken a view that when there is a delay in trial, bail should be granted to the accused. Although trial has not commenced in the case at hand, nevertheless it is an admitted position of the Prosecution that investigation after 110 days of lodging of the FIR has not been completed as the I.O. is still on the lookout for eye-witnesses.

12. That apart, the Prosecution in compliance of the Order of this Court dated 02-05-2016 has today furnished before this Court the Medical Report of the Petitioner dated 03-05-2016 issued by Dr. C. S. Sharma, Head of Department, Psychiatry, STNM Hospital, stating therein that the patient is a case of unstable angina, treated by Dr. D. P. Rai, SMIMS, Tadong. That the patient reported to the STNM Hospital with complaints of restlessness, difficulty in sleeping, sad mood, inability to concentrate and death wish, following stress induced anxiety and depressive disorder and is on antidepressant medication. In view of this Report, the medical condition of the Petitioner is, therefore, to be given due consideration.

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4. (2005) 11 SCC 569
 5. (2000) 9 SCC 443
 6. (2000) 9 SCC 383

13. Hence, considering the entire gamut of facts and circumstances of the case and bearing the principles pertaining to bail as enumerated in the matters discussed hereinabove, I am of the considered opinion that the Petitioner can be enlarged on bail subject to the imposition of stringent conditions.

14. In the result, the Petitioner be enlarged on bail on furnishing PB&SB of Rs.50,000/- (Rupees fifty thousand) only, each, with one solvent surety, to the satisfaction of the Learned Sessions Judge, South Sikkim at Namchi, on the following conditions:-

- (i) 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 from disclosing such facts to the Court or to any Police Officer;
- (ii) He shall make himself available for interrogation by the I.O. as and when required;
- (iii) He shall not leave Sikkim without the prior permission of the Learned Sessions Judge, South Sikkim at Namchi, on grant of which due notice shall be give to the I.O.;
- (iv) The Petitioner shall not threaten or intimidate any witnesses in connection with this case;

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(v) The I.O. shall maintain strict vigilance over the Petitioner to prevent him from tampering with or threatening prosecution witnesses;

15. Should any of the above conditions from (i) to (iv) be violated the Petitioner shall be taken into custody forthwith.

16. I hasten to place on record by way of abundant caution that the discussions hereinabove are only for the purposes of disposing of the Petition for bail. There are no observations on the merits of the case which obviously will have to be done by the concerned Trial Court.

17. The Bail Appln. is allowed and stands disposed of accordingly.

18. A copy of this Order be sent to the Learned Sessions Judge, South Sikkim at Namchi.

19. Certified copies be made available to the parties as per the Rules.

(Meenakshi Madan Rai)
Judge

10-05-2016

Approved for reporting : **Yes**

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Internet : **Yes**

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