

(2011) 12 DEL CK 0233

In the Delhi High Court

Case No : CM No. 16686 of 2011 in WP (C) No.7357 of 2011

Maresh Prasad Singh

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Border Security Force Act, 1968 — Section 46
Penal Code, 1860 (IPC) — Section 300, 302

Citation : (2011) 12 DEL CK 0233

Hon'ble Judges : Indermeet Kaur, J; Anil Kumar, J

Bench : Division Bench

Advocate : Anil Gautam, for the Appellant; Sunil Kumar, for the Respondent

Judgement

Anil Kumar, J.

CM No. 16686/2011

1. This is an application by the petitioner/applicant seeking stay of his order of conviction and sentence and confirmation of sentence and for

suspension of his sentence and for releasing him on bail. The petitioner/applicant, accused Constable Maresh Prasad Singh having no. 860650036

of 115 Bn was found guilty of charge u/s 46 of BSF Act punishable u/s 302 of IPC. Pursuant to incident FIR No. 13/2004 dated 16.2.2004 PS.

Hilli, Dist South Dinajpur on the complaint of Shri Sachindra Nath Mahato s/o BAidyanath Mahto, Village Lakma PO Jamalpur PS Hilli, Distt.

South Dinajpur was registered.

2. The petitioner had served for more than 19 years as a constable. In February, 2004 he was posted at BOP, Mathurapur, West Bengal. The

petitioner was charged u/s 46 of the BSF Act r/w Section 302 of IPC alleging that on 16th February, 2004 at OP Point Ex. BOP Mathurapur he

fired a shot from his INSAS Rifle which resulted in the death of Smt. Lili Mahato.

3. The petitioner was tried by General Security Force Court of BSF from 11th April, 2005 to 2nd May, 2005 and was found guilty of the charge

and was sentenced to undergo life imprisonment and dismissal from service. The conviction and sentence of the petitioner by order dated 2nd

May, 2005 was confirmed by order dated 24th August, 2005.

4. The respondents held that it is not disputed that the death of Smt. Lili Mahato, W/o Sh. Sachin Mahato, R/o Village Lakma, PS Hilli, Distt.

Dakshin Dinajpur was caused on 16th February, 2004 on account of bullet fired from the INSAS Rifle of the petitioner.

5. The respondents, while convicting and sentencing the petitioner believed the testimony of Sitesh Mahato, PW-5 and Sarvopiya Mahato, PW-4

that hot arguments/altercation took place between the deceased whereafter the petitioner had fired one round from his personal weapon to finish

the altercation/arguments. The respondents disbelieved the version of the petitioner that Bangladeshi man had entered into Indian territory for

exchanging packets and when the intruder was asked to stop and he did not stop single shot was fired at the intruder, however, the deceased came

in between and got the bullet wound and bled to death on account medical help being not given to him and for corroboration relied on the

testimony of PW-1, PW-2, PW-6 and PW-11. The respondents also held that though no motive for commission of offence has been established

but there is cogent evidence that the petitioner fired at Smt. Lili Mahato to finish her arguments which proved fatal to her and thus convicted the

petitioner and sentenced him to undergo life imprisonment.

6. The Learned Counsel for the petitioner has very emphatically contended that the petitioner had fired on a Bangladeshi intruder when he was

fleeing after getting the packet and when he did not stop on being challenged, the petitioner had fired the shot. The petitioner had not fired on Smt.

Lili, however, she had come in the line of fire and got injured and subsequently died.

7. The Learned Counsel has pointed out that the testimony of PW-4 Sarvopiya Mahato and PW-5 Sitesh Mahato is not reliable as they are closed

relatives of the deceased and they are not even the eye witnesses. Learned Counsel has also emphasized on the contradictions in the statements of

Sarvopiya Mahato and Sitesh Mahato and has contended that their testimonies are unreliable and the conviction could not be based on them.

8. Mr. Anil Gautam, Learned Counsel has contended that the respondents have committed an error in disregarding the testimony of Sh. Dalip

Singh, Pw 11 on behalf of the prosecution, who had categorically deposed that constable Mahesh Prasad Singh had disclosed that two

Bangladeshi nationals, i.e., one male and female had reached near Smt. Lili in the field where she was working and had exchanged some packet.

The petitioner had reached the spot and had challenged them and had fired one round from his INSAS rifle however, Smt. Lili Mahato came in

between the line and the bullet hit her on her left thigh and she succumbed to injuries. He contended that the testimony of the said witness was

challenged by the respondents and the while convicting the petitioner it has not been taken into consideration. The testimony of said witness does

not corroborate the version of the respondents rather demolished the testimonies of pw4 and pw-5 which have been relied on for convicting the

petitioner. The counsel contended that from the testimony, it has not been established that the bullet was fired on Smt. Lili Mahato nor it could be

established beyond reasonable doubt that there was any altercation between the petitioner and Smt. Lili and the bullet was fired to silence or

terminate the altercation. From the nature of injury on the deceased, according to the Learned Counsel for the petitioner, it could not be inferred

that the injury was caused with the intention to cause death as the deceased had died on account of excessive bleeding as she had not been

provided timely medical help.

9. This has been very emphatically contended that the GSFC failed to consider the Exceptions 2 to 4 of Section 300 of IPC in the facts and

circumstances and also failed to take into account that the place of occurrence was bushy with thick growth of bamboo and banana trees with

obstructed clear view and facilitated concealment and in the circumstances, no foot prints or other evidence could be detected. According to the

Learned Counsel no foot prints in the grassy and bushy area does not rule out completely the presences of intruder who had been challenged by

the petitioner and when they did not stop, the petitioner had fired a single shot but unfortunately the deceased came in the line of fire and she was

not rendered timely medical assistance leading to her death.

10. Learned Counsel for the petitioner/applicant has also contended that the petitioner is in the custody for more than 7 1/2 years as he is incarcerated since 20th February, 2004 and there are no such factors or circumstances, which will disentitle the petitioner for suspension of his sentence and for his release on bail.

11. Pursuant to the order passed by this Court, the nominal roll of the petitioner was called for. The nominal roll of the petitioner reveals that during the period of detention, nothing objectionable against the petitioner has been found. The petitioner had not availed any parole during the period of detention. The nominal roll of the petitioner also reveals that the petitioner has spent 4 years 7 months and 7 days as on 13th December, 2011 in Correctional Home from 21st December, 2005 to 28th July, 2010.

12. The nominal roll also reveals that petitioner was committed to Balurghat District Correctional Home on 16th September, 2005 and was transferred to Berhampore Central Correctional Home on 21st December, 2005.

13. The petitioner is continuing in Gaya Central Jail from 29th August, 2010. He was in Aurangabad District jail from 29th July, 2010 up to 29th August, 2010.

14. The petitioner served as constable for more than 18 years and he has one son and two daughters. At the time of his conviction he had one old aged mother. Nothing has been shown which will disentitle the petitioner for suspension of his sentence and to release him on bail in the facts and circumstances.

15. In the facts and circumstances and for the foregoing reasons, the order of conviction and sentencing the petitioner dated 02.05.2006, confirmed on 24.08.2005, is stayed during the pendency of the present writ petition. The sentence of the petitioner is suspended during the pendency of the writ petition and the petitioner is ordered to be released on bail on furnishing a personal bond in the sum of Rs.20,000/- with one surety of the like amount to the satisfaction of the Superintendent, Central Jail, Gaya (Bihar) where the petitioner is undergoing his sentence as per the nominal roll produced by the respondents. Petitioner is released on bail subject to the condition that the petitioner shall keep the authorities

informed about his residential address and change in the address. The petitioner shall also not leave the country without prior permission of the Court.

A copy of this order be sent to the Superintendent, Central Jail, Gaya (Bihar) for its compliance forthwith. Copies of this order be given Dasti to the counsel for the parties.

W.P.(C) No.7357/2011

List the writ petition for hearing in the category of "After Notice Miscellaneous Matters", on 07.03.2012.