

(2024) 12 SHI CK 0054
In the High Court Of Himachal Pradesh
Case No : CrMP(M) No. : 2760 of 2024

Musafir Hussain

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 26-12-2024

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 483

Indian Penal Code, 1860 — Section 34, 120B, 201, 302

Evidence Act, 1872 — Section 27

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(2)(v), 3(2)(va)

Citation : (2024) 12 SHI CK 0054

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : N.K. Thakur, Karanveer Singh, Tejasvi Sharma

Final Decision : Dismissed

Judgement

Virender Singh, J

1. Applicant-Musafir Hussain has filed the present application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), for releasing him on bail, during the pendency of trial, in case FIR No. 38 of 2023, dated 9th June, 2023, registered under Sections 302, 201, 120 B and 34 of the Indian Penal Code (hereinafter referred to as 'IPC') read with Section 3 (2) (v) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'SC&ST Act'), with Police Station Kihar, District Chamba, H.P.

2. According to the applicant, he is the permanent resident of the address, as mentioned in the bail application.

3. As per the applicant, on the statement of one Raju, the police has registered the FIR in question and the police has falsely implicated him, alongwith other co-accused persons. The story of the prosecution is stated to be concocted one.

4. It is the case of the applicant that nothing has been recovered from him or at his instance and no role, whatsoever, has been found to be played by the applicant, in the alleged crime.

5. It is the further case of the applicant that the recovery of the alleged darat (big sickle) from his house on 15th June, 2023, has nothing to do with the commission of the alleged crime.

6. The investigation, in the present case, is stated to be complete. According to the applicant, the chances of the conclusion of the trial, against him, in near future, are not so bright, as such, no useful purpose would be served by keeping in judicial custody, that too, for indefinite period.

7. The applicant has also tried his luck by moving the bail application, before the Court of learned Special Judge, Chamba, however, his application was dismissed, vide order, dated 20th September, 2024.

8. Apart from this, the learned senior counsel appearing for the applicant, has given certain undertakings, on behalf of the applicant, for which, the applicant is ready to abide by, in case, ordered to be released on bail, during the pendency of the trial.

9. On the basis of the factual position, as mentioned in the application, a prayer has been made to release the applicant on bail, during the pendency of the trial.

10. When put to notice, the police has filed the status report, disclosing therein, that on 8th June, 2024, complainant-Raju has got lodged the report regarding missing of his son, in which, he has disclosed that his son-Manohar is working at Bhatti and used to transport the goods on mules.

10.1. As per the complainant, on the day, when he made statement, his son had come from Bhatti to Jasoh, for transporting the stones. His son had talked with him on phone, and, on the next day, his phone was found to be switched off.

10.2. Thereafter, as per the status report, the police has taken the requisite steps to trace Mnohar, the son of the complainant. He was searched for on 8th June, 2023, but, could not be found. Thereafter, service provider was requested to provide the call details of said Manohar.

10.3. On 9th June, 2023, when ASI Rajesh Kumar was searching for Manohar and reached Halari Nala, about 6 km away from Sanghni, he noticed a shoe lying there. The said shoe was identified to be the shoe of Manohar. Thereafter, during search, in the rivulet, a sack was found to be buried, between the stones in the flowing water, inside which, a blanket was also visible. Upon this, DySP and forensic team visited the spot and in the presence of RFSL team, the said sack was taken out from the rivulet and on checking, the same was found containing both the legs of Manohar, alongwith one blanket. At a short distance from there, underneath the stones, the head and arms of the deceased were found and the remaining parts of his body were also found nearby.

10.4. The team of forensic experts inspected the spot. Photographs were clicked and videography of the place was also done. The physical evidence from the spot was also collected. Thereafter, the dead body was sent for post mortem examination. After the post mortem examination, the dead body was handed over to the uncle of the deceased.

10.5. It has been mentioned in the status report that on 10th June, 2023, the IO has associated one Shabeer, brother of the Child in Conflict with Law (hereinafter referred to as 'CCL'), in the investigation of the case, who disclosed that his sister, i.e. CCL, used to talk with Manohar, which fact was not liked by his family members. Manohar and CCL used to meet each other in the absence of their family members.

10.6. On 6th June, 2023, when, Shabeer, alongwith his cousin sister (CCL), aunt Fareeda, cousin sister Cheena and maternal uncle's daughter Bano, was present at his house at Khadrog, and his uncle Musafir Hussain (applicant) had gone to his another house at Sanghni, Manohar came to their house. Thereafter, a verbal altercation took place between Shabeer and Manohar, regarding his closeness with CCL, upon which, he, CCL, Cheena, Bano and Fareeda gave beatings to Manohar Lal with kick and fist blows and sticks. His mobile phone was also snatched. The incident was also videographed from the mobile phone, which, later on, was deleted.

10.7. During this incident, Shabeer had called his uncle Musafir Hussain (applicant) and let Manohar to go from there. On the same day, at about 2.00 p.m., when, applicant-Musafir Hussain reached near his house at Khadrog from Sanghni, he found Manohar lying in an injured condition. He took him to his cowshed and called his family members, but, by that time, Manohar had died. Thereafter, applicant-Musafir Hussain, without any information, returned back to Sanghni and subsequently, with the help and in connivance with Fareeda, Bano, Cheena and CCL, cut the dead body of Manohar into pieces and buried the same in Halari nallah.

10.8. It has been mentioned in the status report that in order to conceal the identity of the deceased, the accused persons conspired and the applicant, with the help of CCL, took the dead body to Halari nallah and cut it into six pieces and burnt the face with kerosene oil and petrol. The bottles, containing the inflammable substance, and the mobile phone of the deceased were thrown in Sanghni nallah, as such, police has added Section 201 and 34 IPC, in this case.

10.9. Accused-Shabeer Ali was arrested on 10th June, 2023. Thereafter, the forensic team visited the residential house of Shareef Mohammad at Khadroga and taken into possession one axe having blood stains, one pair of shoes and one plank, containing blood stains, as well as, the samples of blood stains from the wall of the cowshed were preserved.

10.10. Further investigation was entrusted to Inspector Babu Ram. During investigation, IO has inquired the matter from applicant-Musafir Hussain and

accused-Fareeda. Both of them had confirmed the factual position, as was revealed by accused-Shabeer Ali. Both of them were also arrested on 13th June, 2023 and were medico-legally examined.

10.11. On 15th June, 2023, accused-Shabeer Ali, after getting his statement, under Section 27 of the Indian Evidence Act, recorded, got recovered one darat, nylon rope from his house at Khadrog and the clothes of deceased and one plastic sack from the nallah, which were taken into possession.

10.12. On the same day, applicant-Musafir Hussain had identified the cow shed, where, he had taken the deceased on 6th June, 2023. Consequently, the spot map was prepared.

10.13. As per the further case of the police, during investigation, it has been found that deceased Manohar used to talk to CCL, which was objected to by accused-Shabeer Ali and his family members. On 5th June, 2023, deceased Manohar came to the house of the accused and inquired about CCL, but, at that time, only Cheena was present there and the other family members had gone to the fields. In the evening, when they returned back, Cheena told them about the visit of Manohar. On 6th June, 2023, when Manohar was on his way to Sanghni, alongwith his mules, and reached near the house of the accused persons, at about 7.15 a.m., he went to the house of the accused persons, but, on seeing accused-Shabeer Ali on the door of the house, he was about to return back. By that time, accused-Shabeer Ali called him to come to their house and have tea. Upon this, Manohar went to their kitchen and started talking with them. After some time, he inquired from CCL as to why she was not talking to him. Thereafter, accused-Shabeer Ali got furious and caught hold of Manohar and he alongwith Fareeda and CCL started giving beatings to Manohar. When Manohar tried to flee from there, he was nabbed and was taken to the cowshed, where, he was again beaten by the accused persons. The said incident was also videographed by accused-Shabeer Ali. After beating him for a considerable time, accused-Shabeer Ali called his uncle-Musafir Hussain (applicant) and made his aunt Fareeda to talk to him. They apprised the applicant about the incident, who advised them to let him go, upon which, after beating Manohar, they let him to go from there. On the same day, applicant-Musafir Hussain, at about 2.00 p.m., reached near his house, he met Manohar, who was injured, and took him to his cowshed. He also called his family members, but, by that time, Manohar had died. Thereafter, they cut the dead body into pieces and buried the same.

10.14. As per the status report, after completion of the investigation, the police has filed the challan, which is pending adjudication before the learned trial Court

11. On the basis of the above facts, it has been apprehended that the applicant is involved in a heinous crime and in case, he is released on bail, there will be a lot of resentment in the area, and the applicant may coerce the witnesses by alluring them to depose in his favour.

12. It is the further case of the police that out of 51 prosecution witnesses, seven

witnesses have been examined and three have been given up and the case was fixed on 12th December, 2024, for recording the statements of six prosecution witnesses.

13. On these submissions, a prayer has been made to dismiss the bail application.

14. As per the allegations, which have been levelled against the applicant, when, he was coming back from Sanghni to his house at Khardola, then, on the way, Manohar was found lying injured and he took him to his cowshed and called his family members, but, by that time, Manohar had died. Thereafter, as per the allegations, without informing, the applicant came back to Sanghni and subsequently, in connivance with other accused persons, he had cut the dead body into pieces and in order to conceal its identity, buried the same into the rivulet. These facts speak voluminously about the seriousness of the offence.

15. Considering the specific allegations, which have been levelled against the applicant, this Court is of the view that the applicant is not able to make out a case, at this stage, in his favour, as, releasing him on bail would give a wrong signal to the society that after committing such a heinous crime, the applicant is still moving freely in the society.

16. Keeping in view the facts and circumstances of the present case read with the allegations, levelled against the applicant, according to which, the dead body of Manohar was found cut in six pieces and was buried at a distant place, on different locations, after pouring inflammable substance over its face, the apprehensions, which have been expressed by the police, in the status report, cannot be said to be unfounded, at this stage.

17. Even otherwise, keeping in view the pace of the trial, this Court is of the view that there is no undue delay in the progress of the trial.

18. Moreover, while deciding the question of bail, a delicate balance between the individual liberty and larger interest of the society has to be maintained.

19. Considering all these facts, the applicant is not able to make out a case for grant of bail, at this stage. Consequently, the bail application is dismissed.

20. Any of the observations, made hereinabove, shall not be taken as an expression of opinion on the merits of the case and the learned trial Court shall decide the matter uninfluenced by any of the observations made hereinabove.