

(1994) 10 DEL CK 0017

In the Delhi High Court

Case No : Criminal M. (M) No. 609 of 1994

Ram Kumar Tyagi

APPELLANT

Vs

The State and another

RESPONDENT

Date of Decision : 07-10-1994

Acts Referred:

Citation : (1994) 4 AD 878 : (1995) CriLJ 1877 : (1994) 3 Crimes 1037 : (1994) 56 DLT 253 : (1994) 31 DRJ 262 : (1995) ILR Delhi 52 : (1995) 2 RCR(Criminal) 730

Hon'ble Judges : Arun Kumar, J

Bench : Single Bench

Advocate : I.U. Khan, Javed Hashmi and Abdul Samad, H.J. Singh, for the Appellant; Subhash Wason, for the Respondent

Judgement

1. This is an application u/s 438 Cr.P.C. for grant of anticipatory bail to the petitioner. The facts relevant for the present application are : on the night of 4/5th July, 1991 at about 2.55 a.m. a case of death on account of bullet shot was registered at P.S. Mansarovar Park, Delhi. The incident occurred in a marriage party. The petitioner herein as well as the deceased Ranbir Singh were part of a marriage party. Admittedly the petitioner as well as deceased Ranbir Singh and a few others had enjoyed drinks and at the relevant time they were dancing in front of the marriage procession. The petitioner as well as deceased Ranbir Singh had revolvers in their hands and were firing in the air through their respective revolvers as part of enjoyment and marriage celebrations. In the course of dancing and while shots were being fired, one bullet hit deceased Ranbir Singh. He was immediately rushed to the hospital where he was declared as "brought dead". The FIR was lodged by one Jitender Kumar who was an employee of deceased Ranbir Singh. As per version in the FIR the deceased was under the influence of liquor. He took the revolver in his hand to fire while dancing along with others as a part of celebration of the occasion. During the dancing and while Ranbir Singh was holding the revolver in his hand, somebody struck against him as a result of which the hand in which he was holding the revolver was shaken

and he got the bullet injury on his right temple from his own revolver. Ranbir Singh fell down and blood started oozing out from his temple. He was removed to the G.T.B. Hospital. In the hospital he was declared as "brought dead". Several other persons who were in the marriage party are also alleged to have given the same version of the incident. However, there was yet another version recorded on 6th July 1991. This was in the shape of statements of Jitender son of Iqbal Singh who is the brother of the widow of Ranbir Singh and Kesar Singh, brother of the deceased. According to these two persons, the bullet had hit the deceased on his forehead just above his nose and towards the right eyebrow. These two persons further added that according to them some other person had shot the deceased but they were unable to say as to who that other person was. The FIR was registered u/s 304A I.P.C.

2. The police filed the report u/s 173 Criminal Procedure Code on 28th May, 1993 for a case against the petitioner u/s 304A Indian Penal Code. In the meanwhile, however, the wife of the deceased, namely, Ms. Jeet Chaudhary filed a complaint on 7th November, 1992 alleging that the petitioner along with certain other persons named in the complaint had committed murder of her husband. In other words, she lodged a complaint against the petitioner and some others for offence u/s 302 Indian Penal Code. The widow also made a grievance that in connivance with the petitioner, the local police had not properly investigated the case. The local police was trying to help the petitioner to escape the charge u/s 302 Indian Penal Code according to her. It is on record that the case was investigated by three agencies : first by the local police, then by the special staff, East District, and thereafter by the Crime Branch. The case registered u/s 304A Indian Penal Code was proceeding before a Metropolitan Magistrate while the complaint of the widow of the deceased was before another Metropolitan Magistrate. In pursuance of her complaint, the complainant led some preliminary evidence which included the statement of Dr. L. K. Baruah of Civil Hospital, Delhi. The main point in the said statement for present purposes is that the fatal shot was fired from the front from about a distance of three feet. The punctured hole was seen about the right eyebrow of the size of the 0.9 cm to 0.9 cm. This statement was recorded on 4th December, 1993. On the same day, another statement of one Satbir was recorded according to which petitioner Ram Kumar Tyagi had fired at Ranbir Singh, deceased. On the basis of the complaint of Smt. Jeet Chaudhary, documents placed on record and the preliminary evidence adduced, the learned Metropolitan Magistrate felt prima facie satisfied that a case was made out against the petitioner Ram Kumar Tyagi u/s 302 Indian Penal Code and on 24th January, 1994 ordered the accused to be summoned.

3. In the statement of Smt. Jeet Chaudhary recorded on 4th December, 1993 in support of her complaint, she clearly implicated the petitioner for having committed the murder of her husband. However, it is worth noting that she had given a statement on 21st September, 1991, i.e., about two and a half months after the incident. In that statement, she did not level any such accusation against the petitioner. In the said statement, she also admitted that Jitender who

lodged the FIR was the servant of the deceased.

4. From the above facts, it is clear that there are three versions on the incident. The first version is as per the FIR lodged soon after the occurrence on 5th July, 1991 according to which the petitioner as well as the deceased had enjoyed drinks before the incident along with some other persons. The petitioner and the deceased were dancing in front of the marriage procession along with others. The petitioner as well as the deceased had revolvers on their respective hands which they were firing in the air as part of the marriage celebration. One of the boys in the dancing party struck against the hand of the deceased in which he was holding his revolver. The hand got shaken as a result of which the deceased hit himself with his own bullet at his right temple which resulted in his death.

5. Apart from the statement of Jitender to this effect, there were several other statements of those who were in the marriage party to the same effect. The second version is as per the police report u/s 173 Criminal Procedure Code according to which the petitioner was to be tried for offence u/s 304A Indian Penal Code. It is a bailable offence and the petitioner had already been granted bail. The third version is based on the complaint of the widow of the deceased dated 7th November, 1992 according to which the petitioner is guilty of offence u/s 302 Indian Penal Code.

6. According to the learned counsel for the petitioner, in view of the three versions of the alleged crime, the benefit should go to the petitioner and he should be admitted to bail. He further submitted that the petitioner is a Government servant being a school teacher in a Government Higher Secondary School. He has roots in the society and there could be no danger of his fleeing from justice or not being available for trial. He further submitted that the third version of murder came nearly two years after the incident and the petitioner had been free during all this period and it cannot be in the interest of justice to send him in custody now. Further, it is submitted that the petitioner has been subjected to Lie Detector test and its result had gone against the prosecution. The learned counsel for the petitioner has heavily relied on the fact that in the statement of complainant Mrs. Jeet Chaudhary recorded on 21st September, 1994, i.e., long after the incident, she did not implicate the petitioner at all. By that time also, the statements of her own brother Jeetender and that of the brother of the deceased Kesar Singh, were on record, according to which, the deceased had been hit on the forehead from the front and not on the temple as suggested by the author of the FIR Jitender Kumar (This is the other Jitender who is deceased's driver). The Statements of Jeetender, brother of the complainant and Kesar Singh, brother of the deceased were recorded on 6th July, 1991. Therefore, the complainant must have been aware of the other version, i.e., the deceased had been hit by a bullet from the front and not on the side on the temple. The learned counsel for the petitioner tried to highlight the weakness of the complainants case by saying that "Will I wait to fire at a time when I am surrounded by so many baratis (members of the marriage party) and in front of

the bride's house where the marriage party was to be received".

7. Two reports of the ballistic experts are on record and both parties have placed reliance thereon. According to the petitioner, the reports exonerate him while according to the respondent complainant, the reports clearly implicate the petitioner. I have mentioned about the reports in this order because they have been placed on record before me and both parties have argued on the basis of the reports. However, I feel any observation on the reports at this stage is likely to cause prejudice at the trial end, Therefore, I am refraining to go further into this aspect.

8. In reply, the learned counsel for the complainant submitted that the petitioner tried to manipulate the investigation right from the beginning in his favor. According to him, the person who lodged the FIR was planted by the petitioner which fact is denied by the petitioner on the basis of statements of the complainant herself on record where she admits that Jitender who lodged the FIR was employee of the deceased. It is further stated that the version that the bullet had hit the deceased on the temple was itself wrong right from the beginning. It was manipulated to make out a case of accidental fire from deceased's own revolver when actually the bullet was fired from the front which could not be so if it was fired from deceased's own revolver. In other words, according to him, straight fire could never be accidental. Now, both the cases, i.e., the police case u/s 304A, Indian Penal Code and the complaint case u/s 302 Indian Penal Code are before the same Court. According to the learned counsel for the petitioner, the police report u/s 173 Criminal Procedure Code itself shows that the petitioner tried to manipulate the initial statements in his favor. Lastly, he submitted that when regular bail is not, granted in cases u/s 302 Indian Penal Code, where is the question of anticipatory bail, as prayed for by the petitioner in the present case ?

9. I have heard the learned counsel for both the parties and considered the material placed on record before me. I am not inclined to accept the argument that it is a straight case u/s 302 Indian Penal Code when even regular bail may not be normally granted. As already noticed, the case has three versions and it is now more than two years since the occurrence and the petitioner has never been incarcerated. When there are three versions of the crime and gradually the case has proceeded to become a case u/s 302 Indian Penal Code, it cannot be said to be a straight case u/s 302 Indian Penal Code. The trial will proceed with three versions of the crime, the result of the trial will alone show as to which version is accepted. In such a situation, should the accused remain behind bars because one of the versions of the crime brings the case u/s 302 Indian Penal Code, when there are three versions of the crime ? I have no hesitation in holding that the benefit should go to the accused.

10. We are allowing an accusatorial system under which a person is supposed to be innocent until proved otherwise. The guilt is established only after trial. Question is how an accused should be dealt with at the trial stage ? Any

incarceration at the trial stage also brings about penal consequences to the detenu. He is deprived of his liberty, the family is deprived of his company as well as his income in most cases. It brings the person as well as his family in disrepute. Those in employment have to face action which may lead to termination of service. On the other hand, there are various other equally important considerations which heavily weigh with Courts in curtailing the liberty of an under-trial accused. Therefore, the presumption of innocence till found guilty cannot be literally given effect to in practice while dealing with cases of bail. The considerations which militate against the right of an accused to get bail are many and in view of the varying facts and circumstances of the cases. It is difficult to enumerate them. However, some of the important and most commonly applicable considerations are :

- (i) Nature and gravity of the offence, the manner of its execution and the circumstances in which it is committed;
- (ii) Chances of the accused fleeing from justice;
- (iii) Chances of tampering with evidence and influencing witnesses by the accused if released on bail;
- (iv) Social aspiration that persons accused of commission of heinous crimes should not remain at large and to maintain faith and confidence of the public in the judicial system;
- (v) The likelihood of the accused charged with heinous crimes and faced with the grim prospect of possible conviction becoming desperate and committing more crimes which may include jeopardising his own life.

Out of several considerations which are to be weighed for purpose of grant or refusal of bail two are uppermost. First, whether the accused will be available for trial and not flee from justice. Second, that he will not influence witnesses and tamper with evidence. The petitioner in the present case is a teacher in a Government school and is, Therefore, a Government servant. He has roots in the society and is not likely to abscond. He does not appear to be a person who will flee from justice. Regarding likelihood of tampering with evidence and influencing witnesses, it is to be noted that he is at large since the beginning and there is no such allegation against him. Therefore, on both counts it is worth giving a try. If there is any allegation against the petitioner in this behalf in future, the opposite party can always seek cancellation of bail.

11. Keeping in view all these facts and circumstances, it is ordered that in the event of arrest of the petitioner in relation to the case u/s 302 Indian Penal Code in which he has been summoned by the learned Metropolitan Magistrate vide order dated 24th January, 1994, he will be released on bail, subject to his furnishing a personal bond in the sum of Rs. 25,000/- with two sureties for the like amount to the satisfaction of the trial Court. The petitioner will not tamper with evidence or contact or try to influence any witness in the case. He will duly

participate in the trial of the case.

12. The petition is disposed of.

13. Order accordingly.