

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

FIRST BAIL APPLICATION NO. 1197 of 2020

22nd JUNE, 2021

Between:

Sukhpal S/o Shri Ramdhun,
R/o Ward No. 22, Rampura,
Near Balmiki Temple,
Rampura, Rudrapur,
District-Udham Singh NagarApplicant

and

State of Uttarakhand.Respondent

Counsel for the Applicant : Mr. Vikas Anand.

Counsel for the Respondent : Mr. V.S. Rathore,
learned A.G.A. for the
State.

Hon'ble Alok Kumar Verma,J.

This bail application has been filed under Section 439 of the Code of Criminal Procedure, 1973 in connection with F.I.R. No.461 of 2019, registered with Police Station-Rudrapur, District Udham Singh Nagar for the offence under Section 302 read with Section 34 of I.P.C..

2. Facts, to the limited extent necessary, are that the informant Rinku Kashyap S/o Babu Ram lodged an F.I.R. against the present applicant-accused along with two co-accused persons, namely, Sukhnandan and Hardev, the brothers of the present applicant-accused.

According to the F.I.R., on 01.09.2019, the informant was going to his house with his brother Prem Shankar (deceased) on his Super Splendor motor cycle, bearing Registration No. UK-06 AQ-2438. They reached near Balmiki temple at around 8.30 p.m. Sukhpal, the present applicant-accused, was standing in the middle of the road. The applicant Sukhpal was asked to move out of the road. Sukhpal started misbehaving with him. Prem Shankar interrupted him, then, Sukhpal slapped Prem Shankar. One Chanchal of Diwakar Medical Store had intervened. The present applicant, Sukhpal and his two brothers Sukhnandan and Hardev brought weapons from Nandlal's house. Sukhpal had a Patal, a sharp edged weapon, in his hand, a rod in Sukhnandan's hand and a Gupti, a traditional swordstick dragger, in Hardev's hand. They assaulted Prem Shankar. He (Prem Shankar) received grievous injuries. He fell on the ground drenched in blood. When Yogesh and other neighbors came to the scene of the incident, all three ran towards Nandlal's house. The informant took his injured brother to the hospital with the help of Yogesh, but, Prem Shankar died on the way. The F.I.R. was registered at 23.00 hrs on 01.09.2019. The inquest proceeding and post-mortem examination were conducted. On 04.09.2019, the present applicant-accused was arrested along with the co-accused persons and at the instance of the present applicant-accused, a Patal, weapon used in commission of the crime, was recovered from the present applicant's house in front of the independent witnesses of the public, Ram Babu and Suresh.

3. Heard Mr. Vikas Anand, the learned counsel for the applicant and Mr. V.S. Rathore, the learned A.G.A. for the State through video conferencing.

4. The learned counsel for the applicant submitted that the applicant has been implicated in the present matter; no specific role of the applicant has been assigned in the F.I.R., the applicant was beaten by the deceased and his brother in which he received grievous injuries; the prosecution witness Chanchal also stated that the applicant received grievous injuries and he was taken to the hospital and at that time the deceased was alive; the act of the applicant was in self-defence, therefore, the act done in self-defence does not constitute any offence; the applicant lodged a complaint against the deceased and his brother on 02.09.2019, however, his complaint was not registered by the police; there are contradictions in the statements of the so called eye witnesses, recorded during the investigation, and the applicant is in custody since 04.09.2019.

5. On the other hand, Mr. V.S. Rathore, the learned counsel appearing for the State opposed the bail application. He submitted that the incident happened twice on the date 01.09.2019. The first incident took place when the informant was going to his house with his brother Prem Shankar (deceased) on his motor cycle. At that time, Prem Shankar was sitting behind on the motor cycle. The present applicant Sukhpal, was standing in the middle of the way. He was asked to move out of the way. Sukhpal started abusing on this. Prem Shankar asked Sukhpal why he abused. Then, Sukhpal slapped him. A fight broke out between these two. Meanwhile, the co-accused persons, namely, Sukhnandan and Hardev, had also come to the spot. Eye witness Chanchal of Diwakar Medical Store had intervened. The informant and his brother Prem Shankar had left their motor cycle at the spot and went to their

house. After sometime, both of them were going to get their motor cycle, the present applicant and co-accused persons assaulted Prem Shankar with the intention to kill him. At that time, the present applicant had a Patal, a sharp edged weapon, in his hand, a rode in Sukhnandan's hand and a Gupti in Hardev's hand. They had assaulted Prem Shankar with the said weapons. The informant and Smt. Renu, Pappu, Smt. Mithlesh Devi and Smt. Roopam Devi, eye-witnesses, raised an alarm. Then, these three persons fled from the spot. In the said incident, Prem Shankar was seriously injured. He was taken to the hospital with the help of Yogesh, where the doctor declared him brought dead. The learned counsel for the State further submitted that according to the post-mortem report, ten injuries were found on the body of the deceased and the cause of the death was head injury. He further submitted that on 04.09.2019, the present applicant was arrested and at the instance of the applicant, a Patal, weapon used in commission of crime, was recovered from his house in front of the independent witness Ram Babu and Suresh. The learned counsel for the State further contended that the prosecution witness, namely, Sanjeev, in his statement, recorded under Section 161 Cr.P.C., has stated that Sukhpal, the present applicant, was taken to the hospital, but, he ran away from the hospital. He further argued that all the witnesses, including eye witnesses, supported the prosecution case in their statements, recorded under Sections 161 Cr.P.C. The act of the present applicant was not in good faith and the act was done with premeditation, therefore, the applicant cannot claim private defence.

6. In the case of **State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21**, the Hon'ble Apex Court has held

that it is well settled that the matters to be considered in an application for bail, are (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence, (ii) nature and gravity of charge, (iii) severity of the punishment in the event of conviction, (iv) danger of the accused absconding or fleeing, if released on bail, (v) character, behavior, means, position and standing of the accused, (vi) likelihood of the offence being repeated, (vii) reasonable apprehension of the witnesses being tampered with, and (viii) danger, of course, of justice being thwarted by grant of bail.

7. In determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. While dealing with an application for bail, there is a need to indicate in the order, reasons for *prima facie* considering why bail is being granted particularly where an accused is charged of having committed a serious offence. Any order dehors reasons suffers from non application of mind as observed by the Hon'ble Apex Court in **Ram Govind Upadhyay Vs. Sudarshan Singh and others, (2002)3 SCC 598.**

8. A ratio decidendi of the judgment of Hon'ble Apex Court in **Anil Kumar Yadav vs. State (N.C.T.) of Delhi and another, 2018(1) CCSC 117** is that in serious crimes, the mere fact that the accused is in custody for more than one

year, may not be a relevant consideration to release the accused on bail.

9. At this stage, it would be inappropriate to discuss the evidence in depth because it is likely to influence the trial court, but, from the perusal of the evidence, collected during the investigation, it *prima facie* appears that the applicant was involved in this crime. No reason is found to implicate the applicant. Therefore, there is no force in the submissions of the learned counsel for the applicant and no good ground has been made out for enlarging the applicant on bail at this stage, therefore, the bail application is liable to be rejected. The bail application is rejected accordingly.

10. It is clarified that the observations made regarding the bail application are limited to the decision, in the light of the facts, provided by the parties at this stage, as to whether the bail application should be allowed or not and the said observations shall not effect the trial of the case.

ALOK KUMAR VERMA, J.

Dt: 22nd June, 2021
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