

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

**THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA**

**FIRST BAIL APPLICATION NO. 986 of 2020**

**16<sup>TH</sup> JUNE, 2021**

Between:

Baljeet Singh @ Jot, S/o Shri Gurbaksh Singh, R/o  
Village Mukandpur, Police Station Gadarpur, District  
Udham Singh Nagar ...Applicant

and

State of Uttarakhand. ...Respondent

Counsel for the Applicant : Mr. R. P. Singh, learned  
counsel with Ms. Sonia  
Chawla, learned counsel.

Counsel for the Respondent : Mr. T.C. Aggarwal, learned  
Deputy Advocate General  
for the State and Ms.  
Charanjeet Kaur, learned  
counsel for the informant.

**Hon'ble Alok Kumar Verma,J.**

This bail application has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in connection with FIR No.189 of 2019, registered with Police Station Gadarpur, District Udham Singh Nagar for the offence under Section 302 read with Section 34 of IPC and Section 3(2) (V) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Facts, to the limited extent necessary, are that the informant Nitesh Kumar lodged an FIR against the present applicant-accused along with three named co-accused persons and some unknown persons. According to the FIR, the informant is a member of a Scheduled Caste. His father purchased a land measuring 1.5 acres from Janardan Dubey, Tarkeshwar Dubey and Harikrishna Dubey. The land was in the possession of the informant till the year, 2018. The said land is lying vacant since the year, 2019. Manoj Dubey, a co-accused was having enmity with the informant due to the said land. Manoj Dubey used to threaten to kill him and his two brothers. He always abused them using caste indicating words. Mayank, aged about 23 years (deceased), the younger brother of the informant, was posted as a Constable in Police Station Madhav Tanda, District Pilibhit, Uttar Pradesh. He had come home on leave. On 13.08.2019, the informant and his brother Mayank had come to Gadarpur for their personal work. Both of them reached Khalsa Dhaba to settle their land dispute. Mayank went inside the dhaba. The informant was standing outside. He heard gunshots. When he went inside the dhaba, he saw that his brother Mayank was lying on the ground drenched in blood and three persons from inside the dhaba had run away. Manoj Dubey, a co-accused, along with his associates Uday Veer Singh @ Sanni Virk, Gaurav @ Nikka, Baljeet Singh @ Jot (present applicant-accused) with some other associates, shot and killed his brother Mayank at around 8:30 hrs. due to the land dispute. The whole incident was seen by Sandeep Singh @ Bunty Randhawa, Sukhdev Singh, Harman Deep Singh and Pradeep Singh. The FIR was registered at 8:30 hrs. on 13.08.2019. On 16.08.2019, the present applicant was arrested and at the time of his arrest, one revolver was recovered from his possession.

During the investigation, the name of a co-accused Virender Singh @ Sunny came into light and he was arrested on 21.08.2019. At the time of the arrest of Virender Singh @ Sunny, a pistol of 32 bore, weapon used in commission of the crime, was recovered. The post-mortem examination was conducted. The statements of the witnesses were recorded under Section 161 and Section 164 of the Code of Criminal Procedure.

3. Heard Mr. R. P. Singh, the learned counsel and

Ms. Sonia Chawla, the learned counsel for the applicant, Mr. T. C. Aggarwal, the learned Deputy Advocate General for the State and Ms. Charanjeet Kaur, the learned counsel for the informant through video conferencing.

4. Mr. R. P. Singh, the learned counsel for the applicant submitted that the applicant has been implicated in this matter; he is an innocent person; he has no concern with the land in dispute; he had no enmity with the informant or his family, therefore, the applicant had no motive at all to cause any harm to the deceased or any member of his family; the story of the informant is highly unbelievable; nothing has been recovered from him; he was not present on the spot; he has been implicated in the alleged crime in collusion with the police personnel since the deceased was a Police Constable and the present applicant was having two pending criminal cases; the presence of the so called eye witnesses are highly doubtful; no offence under Section 3(2) (V) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out against him and the applicant, aged about 24 years, is in custody since 16.08.2019.

5. Mr. T. C. Aggarwal, the learned Deputy Advocate General for the State and Ms. Charanjeet Kaur, the learned counsel appearing for the informant opposed the bail application and submitted that all the eye witnesses, namely, Sandeep Singh @ Bunty Randhawa, Sukhdev Singh, Harman Deep Singh and Pradeep Singh supported the case in their statements, recorded under Section 161 and Section 164 of the Code of Criminal Procedure, 1973; a revolver was recovered from the possession of the applicant, although, at the instance of the co-accused Virendra Singh @ Sunny a pistol of 32 bore, used in commission of the crime, was recovered, the Investigating Officer collected the Digital Video Recorder of the CCTV footage from Surjeet Singh @ Bittu, the owner of the Khalsa Dhaba; it is evidently clear from the CCTV footage that on the date of the incident, the applicant was present on the spot; according to Surjeet Singh @ Bittu, the owner of the said dhaba, a certificate, under Section 65-B of the Evidence Act, was prepared by the Police; doctor R K Singh and doctor Akhilesh Kumar conducted the post-mortem examination of the dead body of the deceased and according to these witnesses, the cause of death of the deceased was haemorrhage and coma as a result of the gunshot injury. Mr. T. C. Aggarwal, the learned Deputy Advocate General for the State further submitted that every effort is being made by the learned trial court to examine the witnesses.

6. It is true that Section 439 of the Code of Criminal Procedure confers very wide power regarding bail. But, while granting bail, the High Court is guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, the possibility of the tampering with the evidence and such other grounds are required to be taken into consideration.

7. In **Kalyan Chandra Sarkar vs. Rajesh Ranjan, (2004)7 SCC 528**, the Hon'ble Supreme Court has held that the law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non application of mind.

8. 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.

9. 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.**

10. From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In **Anil Kumar Yadav Vs. State (N.C.T.) of Delhi and another, 2018(1) CCSC 117**, the Hon'ble Apex Court has held that in serious offence, the mere fact that the accused was in custody for more than one year, may not be a relevant consideration to release the accused on bail.

11. The applicant-accused is facing trial. During the investigation, evidence has been found that there was a land dispute between the accused persons, including the present applicant, and the family of the informant and due to the said land dispute, the deceased was murdered by the applicant along with the co-accused persons. According to the post mortem report, the cause of death of the deceased was haemorrhage and coma as a result of the gunshot injury.

12. It would be inappropriate to discuss the evidence in depth at this stage because it is likely to influence the trial court. But, the evidence, collected during the investigation, *prima facie* indicate involvement of the applicant in the offence in question. No reason is found to implicate the present applicant.

13. In view of the facts and circumstances of the case, there is no force in the submissions of the learned counsel for the applicant-accused and no good ground has been made out for enlarging the applicant on bail at this stage, therefore, the bail applicant is liable to be rejected. The bail application is rejected accordingly.

14. 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. The said observations shall not effect the trial of the case.

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**ALOK KUMAR VERMA, J.**

Dated: 16<sup>th</sup> June, 2021  
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