

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
ATJAMMU**

Reserved on: 28.10.2021

Pronounced on: 12.11.2021

Bail App No. 79/2021

Kewal Sharma

.....Appellant/Petitioner(s)

Through :- Mr. Anmol Sharma, Advocate

v/s

Union Territory of J&K

.....Respondent(s)

Through :- Mr. Aseem Sawhney, AAG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner is facing trial for commission of offence under section 302 RPC in a challan, tilted, State vs Kewal Sharma arising out of FIR bearing No. 109/2014 for commission of offence under section 302 RPC pending before the 2nd Additional Sessions Judge, Jammu.
2. The present bail application has been filed by the petitioner on the ground that the petitioner has been in custody since 06.06.2014 and the learned trial court has rejected the bail application without considering the fact that the material witnesses have been examined and further that the evidence led by the prosecution does not connect the petitioner with the commission of offence, who has been in custody for the last more than seven years.
3. Mr. Anmol Sharma, learned counsel for the petitioner has reiterated the grounds those have been taken in the application. He further argued that the material witnesses have been examined and the whole

of the case of prosecution is dependent upon the circumstantial evidence and the petitioner is in custody without there being any evidence against him.

4. *Per contra*, Mr. Aseem Sawhney, learned AAG, learned counsel for the respondent has vehemently argued that while considering the bail application, the merits are not required to be considered and all the arguments raised by Mr. Anmol Sharma pertained to the merits of the case and as such, in view of the bar contained in section 497 Code of Criminal Procedure regarding the grant of bail in offences exclusively punishable with death or life imprisonment, the petitioner cannot be enlarged on bail.
5. Heard and perused the scanned record of the trial court.
6. From the record it is evident that the petitioner is facing trial for commission of offence under section 302 RPC pending before the court of 2nd Additional Sessions Judge, Jammu. The allegations against the petitioner are that on 28.08.2013, when the deceased Vijay Kumar came to the residence of the petitioner for the purpose of getting money regarding the land purchased by the petitioner from the deceased, the petitioner murdered the deceased and cut the body of the deceased into various parts with Axe and further after keeping the body parts in a trunk and bag carried in a vehicle bearing registration No. JK02-BB 4460 and threw in the river-Chenab.
7. The charges for commission of offences under sections 302/201 RPC were framed against the petitioner on 10.11.2014 and the prosecution has cited as many as 32 witnesses and out of which, many witnesses

have been examined by the prosecution and number of other witnesses are yet to be examined.

8. The case against the petitioner is based upon the disclosure statement and the last scene theory. So far as evidence brought on record is concerned, it is not the case where all the material witnesses have turned hostile and have not supported the prosecution story. This Court no doubt can look in to evidence but cannot appreciate the evidence brought on record by the prosecution. The contentions raised by the petitioner that there is in fact no last scene theory and the disclosure does not connect the petitioner with any crime, pertain to the merits and cannot be considered at this stage. A number of other witnesses are yet to be examined and they include the material witnesses as well with regard to the proceeding of the deceased to the house of the petitioner.
9. The Apex Court in *Satish Jaggi v. State of Chhattisgarh*, reported in (2007) 11 SCC 195 has held as under:

“Normally if the offence is non-bailable also, bail can be granted if the facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress and if such findings are allowed to stand it would seriously prejudice the prosecution case. At the stage of

granting of bail, the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.”

10. The allegations against the petitioner are serious in nature. More so, the contention of the petitioner that the petitioner is entitled to bail on ground of delay is also not sustainable in view of the fact that it is not the case where the prosecution has not led any evidence, rather the prosecution has examined number of witnesses. Otherwise also, due to corona pandemic all the Courts functioned in restricted manner for the last more than one year. But still the trial court can be directed to conclude the trial expeditiously.
11. In view of the above, the instant application has no merit, as such, the same is dismissed. The learned trial court is directed to conclude the trial expeditiously and no un-necessary adjournments shall be granted to either of the parties.

**(Rajnish Oswal
Judge**

JAMMU
12.11.2021
Rakesh

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No