

**(2006) 10 AHC CK 0153**

**Allahabad High Court**

**Case No:** None

Shiv Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision:** Oct. 4, 2006

**Hon'ble Judges:** Shiv Shanker, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### **Judgement**

Shiv Shanker, J.

This is first bail application moved on behalf of the applicant.

2. The prosecution story, in brief, is that the first informant Ravi Kumar son of Phulan Singh along with his brother Sanjeev Kumar and his mother Smt. Ved Shree was returning to their house from their field on 13.11.2005 at 9.00 A.M. When they reached in front the house of Ram Kishan, accused persons Shiv Singh, Sahdeo Singh and Siya Ram surrounded them and started abusing to which objection was raised by them. Thereafter, Shiv Singh (accused-applicant) went to his house and brought country made pistol. The other accused were armed with gun and lathi. Accused Shiv Singh opened fire upon the chest of Sanjeev Kumar and other co-accused assaulted the informant and his mother due to which they also received injuries in the alleged occurrence. Sanjeev Kumar died on the spot due to the sustaining of firearm injuries. Thereafter, first information report was lodged by Ravi Kumar on 13.11.2005 at 11.55 A.M. at the concerned police station.

3. Heard Sri Jagdish Singh Sengar, Senior Advocate on behalf of the applicant at a very great length and the learned A.G.A. I have also perused the whole records.

4. It is contended by the learned Counsel for the applicant that one gun shot wound of entry was found on the chest surrounded by tattooing and blackening besides two abrasions on the person of the deceased, as per the opinion of doctor. Therefore, it appears that it was caused from a very close range. It is further

contended that four-ounce pasty food was found in the stomach. The small intestine contained digested food and large intestine contained faecal matter. Thus, the post mortem report of the deceased belies the prosecution story. All this indicates that the occurrence took place in the early hours of the morning in the cover of darkness and no one had seen the occurrence and when the dead body was detected lying in front of the house Ram Kishan, the first informant and his mother picked up quarrel with suspected persons indulged in Marpeet in which they have received injuries and this is the precise reason that the first informant was medically examined on 14.11.2005 and his mother was medically examined on 15.11.2005 regarding their injuries. A false case was concocted. It is further contended that it has not been mentioned in the inquest report that the first informant and his mother were beaten. This shows that they have not received any injury in the alleged occurrence. While the first informant is also a witness of Panchayatnama. However, this fact was not mentioned in the relevant column of the inquest report. It is further contended that both the injured sustained simple injuries, like contusion and lacerated wound, except one injury wherein the fracture was found in the right hand of Smt. Ved Shree.. They did not sustain any firearm injury and the injuries were not inflicted by the present accused-applicant

5. It is further contended that the Investigating Officer did not find blood on the place of occurrence and, therefore, no blood stained earth was taken by him as mentioned by the Investigating Officer in the case diary. This fact makes the place of occurrence doubtful and it appears that the deceased was killed somewhere else due to some other reason as the dead body was lying in front of the house of Ram Kishan. It is further contended that there is no independent witness of the alleged occurrence. The Investigating Officer has not recorded the statement of Ram Kishan as well as his brother Ravi Kumar were allegedly present at the time of occurrence. In the absence of any independent witness, the prosecution story becomes suspicious It is further contended that civil litigation is pending between the parties since last ten years and in the past, no Marpeet took place. Therefore, it is highly improbable that after ten years of the pendency of the civil litigation, without any provocation, rhyme or reason, the applicant could go to the extent of killing the deceased and this fact also rules out the participation of the accused in the occurrence and it appears that the occurrence took place due to some other reason by some other persons and just on suspicion and enmity, the applicant and others are named in the first information report.

6. It is further contended that the house of applicant is situate at a considerable distance from the house of Ram, Kishan, the place of alleged occurrence. This circumstance also creates suspicion that why the deceased and his brother and mother were standing to wait for coming the applicant and other accused. It is further contended that the bail application of co-accused has already been allowed.

7. On the other hand, the learned A.G.A. has opposed the bail application.

8. The present accused-applicant is also named in the first information report, which was lodged promptly without inordinate delay i.e. after 2.55 hours of the alleged occurrence after coverings distance of ten kilometers from the place of occurrence. The applicant is the main assailant who had caused the firearm injuries from a very close range upon the person of the deceased. He had died on the spot instantaneously. This version is fully corroborated with the postmortem report of the deceased, as there was one gunshot wound of entry on the chest surrounded by tattooing and blackening. This is a case of broad daylight murder in village Abadi.

9. So far as the contention regarding the inquest report is concerned, it has been observed by the Apex Court in [Radha Mohan Singh @ Lal Saheb and Others Vs. State of U.P.](#), (three Hon"ble Judge) that Purpose of- Limited to ascertain of cause of death - mention of names of accused eye witnesses or weapons carried in inquest report - not necessary. In the above decision of the Apex Court, the earlier decision of Apex Court, namely Mehraj Singh v. State of U.P. reported in AIR 1994 SCC 2210, has been over ruled. Therefore, the contention of the learned Counsel appearing on behalf of the applicant regarding the inquest report has no legs to stand.

10. So far as the contention of not finding blood on the spot is concerned it has been mentioned in the case diary by the Investigating Officer that no blood was found on the place of occurrence. In this regard, there may be some circumstances for reaching the public at the place of occurrence in the meanwhile due to which blood stained earth may be disappeared and this possibility cannot be ruled out. It is worthwhile to mentioned here that the place of occurrence is not liable to be suspected merely on this ground as the dead body was found by the Investigating Officer on the same place of occurrence where the inquest report of the dead body of the deceased was prepared.

11. So far as the contention of absence the independent witnesses is concerned, it has come during the course of investigation, including the police report submitted, that none has dared to become a witness against the accused persons. On the other hand, the first informant Ravi Kumar and his mother are the injured witnesses of the alleged occurrence and, therefore, there is guarantee of the presence of both the witnesses on the place of occurrence at the time alleged incident. Therefore, the prosecution story cannot be deemed as suspicious at this stage in absence of independent witnesses.

12. So far as the contention of the learned Counsel appearing for the applicant regarding the pasty food, digested food, matter and faecal matter is concerned, the alleged occurrence took place in the beginning of winter season of the month of November, 2005. Naturally, now-a-day, people are taking their meal in the late hours of night by 11.00 P.M. and slept thereafter and rising in the late hours of morning. Thereafter, they go to attend the natural calls. It depends upon the circumstances and the habits of the person. Further, in the present day, the process of digestion almost becomes unusual due to indigestion and gases etc. In those

circumstances, there is every possibility of going the person to attend the natural call belatedly. Moreover, this question can be considered at the time of trial after due cross-examination of the prosecution witnesses.

13. So far as the contention regarding the injuries of injured witnesses is concerned, it appears that the first informant was medically examined on the next day on 14.11.2005 and Smt. Ved Shree was medically examined on 15.11.2005. It has been specifically mentioned in the first information report by the first informant that he and his mother also sustained lathi and butt injury caused by the other accused persons whose bail application had already been allowed. Therefore, their injury reports indicate that they have received the same in the alleged occurrence. It is worthwhile to mention here that fracture was found in 4th metacarpal bone of right hand. In such circumstances, it cannot be deemed that such type of injury could have been manufactured by becoming a witnesses of the prosecution case. In any view of the matter, the occurrence in question had occurred in the broad daylight and the F.I.R was also lodged promptly without inordinate delay. Further, the prosecution version is fully corroborated by the medical evidence.

14. Considering the facts and circumstances of the case, I do not find substance in any argument advanced by the learned Senior Advocate appearing on behalf of the applicant. Therefore, this bail application is liable to be rejected,

15. Consequently, the bail application is rejected.