

**(1999) 03 DEL CK 0080****Delhi High Court****Case No:** Criminal M. (M) No. 4369/98

Shibu Soren

APPELLANT

Vs

CBI

RESPONDENT

**Date of Decision:** March 10, 1999**Citation:** (1999) 3 AD 508 : (1999) 78 DLT 769 : (1999) 49 DRJ 757**Hon'ble Judges:** J.B. Goel, J**Bench:** Single Bench**Advocate:** Mr. R.K. Anand, Mr. Sanjiv Kumar and Mr. B.K. Sinha, for the Appellant; Mr. A.K. Dutt, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

J.B. Goel, J.

The petitioner seeks anticipatory bail u/s 438 of the Code of Criminal Procedure (for short the "Code") in a case for an offence u/s 120-B read with Section 364, 302 the 201 IPC.

2. Initially the case was registered u/s 365 IPC. The petitioner was arrested on 22.5.1998 but was released on bail on 13.7.1998 by an Addl. Sessions Judge, Delhi. After further investigation the CBI has submitted a report u/s 173 of the Code against seven persons including the petitioner. The petitioner on being summoned by the learned Chief Metropolitan Magistrate (C.M.M.) apprehending his arrest approached the Sessions Judge for anticipatory bail but it was rejected by the learned Addl. Sessions Judge (ASJ). He has now approached this Court.

3. Briefly, the facts as emerged during investigation are that the petitioner had been returned as a M.P. from Dumka District Constituency, Bihar in the year 1980 and again in 1991. One Shashi Nath Jha (hereinafter referred to as "Jha") was employed as his Private Secretary/Private Assistant when he was M.P. and used to work at his office-cum-residence at 17, Rakab Ganj Road, New Delhi. Jha had left that office on 22.5.94 in the evening for his home but he did not reach home and since then he is

missing. A report about his missing was lodged on 24.5.1994 by his brother Amarnath Jha at Police Post North Avenue, New Delhi and on 2.6.94 another report was lodged on the basis of which a FIR u/s 365 IPC was registered at P.S. Parliament Street. No headway was made in the matter and on a petition being filed in this Court the investigation was transferred to Central Bureau of Investigation (CBI) who took up the investigation and registered RC No. 05(S)/96/SIU/XI/New Delhi. The CBI after investigation has submitted report with the conclusions that Jha was kidnapped from a booth (cigarette shop) near Petrol Pump at Daula Kuan Chowk, New Delhi at about 11.00 P.M. on 22.5.1994 and taken away in a car by 4-5 persons, two of whom have been identified as Sunil Khaware and Ashish Thakre who had been arraigned as accused Nos. 2 and 3. After being so kidnapped Jha is alleged to have been taken to village Piska Nagri, Ranchi, Bihar and he was seen in the company of some Jharkhand Mukti Morcha (JMM) leaders including Nand Kishor Mehto, Shailendra Bhattacharya, Ajay Kumar Mehto @ Dalip, Pashupati Nath Mehto @ Posho (Accused No. 4 to 7) and some other unknown persons on the day a tournament was held there and then he was taken at the house of accused No. 5 (Nandu) as his guest where he was treated with drinks and meat till late in the night. Shailendra Bhattacharya was also seen waiting in a car Along with a woman on front of his house that evening possibly arranged for Jha. One Charo Oriaon, (PW) was present in that party who after taking liquor had fallen asleep and at about midnight on hearing the cries of "bachao" "bachao" he woke up and saw Nand Kishore Mehto @ Nandu giving blows with iron rod on his head, he got scared and was rescued out of that house. On hearing these cries from the house of Nand Kishore, a neighbored Sudershan Soni also woke up, came out of his house and saw Jha being brought out from the house of Nand Kishore Mehto @ Nandu, put in the car waiting outside and then being taken away by Ajay Kumar Mehto & Dalip (accused No. 6), two unknown persons, Shailendra Bhattacharya (accused No. 5) and the aforesaid unknown lady. Nand Kishore Mehto and Pashupati Nath followed them on a motor cycle. On the next morning some villagers had noticed half buried human body near a pond in the village near the brick kiln of Nandu being preyed upon by dogs. Subsequently that body was removed somewhere else, suspected to be by Nand Kishore.

4. On source information received by the CBI that a grave like place had been noticed at a place in Piska Bagan, at about that time, this grave was exhumed on 13.8.1998 by the CBI in the presence of an Executive Magistrate, a Govt. doctor and some other panch witnesses and from there full skeleton of a human body was recovered which was seized. Post mortem on the skeleton was conducted on the same day at Ranchi Medical College and Hospital, and it was opined that the age, sex and height of the skeleton resemble with the physical features of Jha and also the time of death also matched the approximate time of missing of Jha. The Skull of that dead body was then sent to Andhra Pradesh State Forensic Sciences Laboratory, Hyderabad and the Forensic experts on the basis of skull super imposition test with the photograph of Jha have also opined that the skull could be

of Jha and that the injuries on that skull were ante-mortem which must have been caused at the time of his death.

5. Murder of Jha is alleged to have been committed as a result of conspiracy hatched by and at the instance of the petitioner. For that purpose inter alias certain circumstances of motive and conduct of the petitioner have been relied. The circumstances about the motive are :-

6. It is alleged that on 26.7.1993, a "No Confidence Motion" was moved against the government then headed by Shri. P.V. Narasimha Rao, To defeat that motion and for securing the votes of four JMM Party MPs including that of the petitioner huge amounts of illegal gratification as quid-pro-quo to support that government were given to them. Jha being PA/PS of the petitioner was handling confidential and secret matters including financial matters of the petitioner as latter's trusted man; the aforesaid amounts so taken as bribe by the petitioner and others were deposited in Punjab National Bank, Nauroji Nagar, New Delhi and Jha was aware of those illegal transactions and he expected and had demanded a share out of that bribe money from the petitioner; it is also alleged that during July, 1993 to May, 1994 the Petitioner had also shown some financial favours to Jha as was apparent by sudden change in the living style and status of Jha. A partnership firm under the name and style of M/s. Simex International located at 59, Amritpuri, East of Kailash was floated by the petitioner with four partners - namely, his wife Smt. Rupi, Sushil Kumar his Chartered Accountant, Shashi Nath Jha and his son Hemant Shorey with equal shares. The finance for the firm was provided by the petitioner alone by obtaining OD limit of Rs. 3.75 lakhs against his fixed deposit of Rs. 5 lakhs in aforesaid Punjab National Bank, which apparently was a part of the pay off money received by him. Jha had not invested any money in that firm. Jha was retired from that firm before he had disappeared on 22.5.1994, Jha had been telling some named persons that he was expecting his share from the petitioner. In the month of December 1993 or January 1994 some posters had come up all over Bokaro and other parts of Jharkhand area about aforesaid JMM pay-offs including details of bank accounts where the said bribe money had been deposited. The petitioner suspected Jha for this leakage and on that account Jha was apprehensive of threats to his life from the petitioner.

7. It is further alleged that Jha had committed an act of sodomy with a relation of the petitioner who had visited and stayed at his house some time in April/May, 1994. This fact was known to the petitioner and the members of his family and Jha was given threats by them and was apprehensive of his safety before his disappearance for that reason also.

8. The petitioner was away in Bihar during 16.5.1994 to 31.5.1994 when Jha was kidnapped. Petitioner on return from Bihar on 1.6.1994 had visited the house of Jha and met his mother and then his mother Along with two minor daughters of Jha, and his brother Amar Nath Jha had visited and met the petitioner at his house on

2.6.1994. The petitioner on 2.6.94 is alleged to have told the mother and daughters of the deceased that "Shashi Nath Jha To Upar Chala Gaya Hai. Ab Woh Nahin Ayega. Tum Use Dilli Bhar Mein Hi to Dhoondoge Na, Us Se Aage To Nahin Dhoondh Paoge." This conduct is relied as suggestive of his complicity in elimination of Jha, and also that the petitioner was aware that Jha was not alive, which he was concealing and he had also avoided to get the investigation in the matter being transferred to the Crime Branch or CBI and also publicity being given about the disappearance of Jha as was desired by the mother and brother of Jha.

9. It is alleged that a conspiracy was hatched by the petitioner inter alias with accused Nand Kishore Mehto @ Nandu. Said Nand Kishore was rewarded by the petitioner first making him a member of the Central Committee of the JMM Party in early 1994 and then giving him an Assembly Ticket in the year 1995 from Hatia Constituency in Bihar, petitioner being in charge of the affairs of the JMM Party. This was done by overlooking the claim of other more senior and deserving workers of the party.

10. The information which ultimately led to the recovery of human body on exhumation on 13.8.1998 was first given by one Ram Dev Gope resident of village Tikra Toli (Bihar) who had come across a new grave like site in Piska Bagan. Ram Dev Gopi was called by accused Posho in the first week of September, 1998 (after recovery of human skeletan) and he was asked to go to Delhi and in fact was taken in the car of Nandu to the Railway Station Along with two persons Samu and Rajindra and on reaching Delhi he was taken straight to the house of the petitioner and stayed there as his guest for two weeks. During his stay he was interrogated by the petitioner as a result of this said Ram Dev Gope was scared and after 4/5 days stay he desired to go back to his home but the petitioner insisted on his staying with him and he also offered him to work with him as a Mali on salary which he had declined. He unwillingly stayed there for 12/14 days and during his stay Nandu's brother Ramesh had also joined there at the house of the petitioner. He returned from Delhi to Ranchi on 18.9.98 by train and at the railway station he was received and taken to his village by Nandu in his Maruti car.

11. Learned counsel for the petitioner has contended that on the basis of the material collected by the CBI the petitioner was arrested by CBI the petitioner was arrested by CBI on 22.5.1998, was extensively interrogated but nothing to connect him was discovered and then he was admitted to bail on 13.7.1998 by the learned Additional Sessions Judge; that no new material or circumstance has been brought on record thereafter also to connect him; also that the material on record is not sufficient to show that the petitioner had entered into conspiracy to eliminate Jha. Reliance has been placed on State of U.P. Thru CBI Vs . Dr. Sanjay Singh and Anr. and P.K. Narayanan Vs. State of Kerala,

12. Whereas learned counsel for the respondent-CBI has contended that the material on record is sufficient to prima facie show that Jha has been eliminated in

pursuance of conspiracy engineered at the instance of the petitioner and taking into consideration the material, circumstances, nature and gravity of the offence grant of bail is not justified, that considering his position, there is danger of witnesses being tampered with and there is instance of Ram Dev Gope available on record to show it also; that at this stage it would not be proper to delve deep about the merit of the evidence which *prima facie* cannot be said to be not sufficient to sustain conviction. Direct evidence of conspiracy is rarely available and the two cases relied are based on their own facts and one of the case is of post trial.

13. In the case of P.K. Narayanan (*supra*) it was held that the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. And in the case of Dr. Sanjay Singh (*supra*) it was held that mere suspicion of motive cannot serve as a sufficient ground for framing the charges in the absence of any material, *prima facie* showing that the particular motive has passed into action and that the accused is connected with that action in question.

14. Conspiracy is hatched in secrecy and is generally a matter of inferences deduced from acts of the accused. His conduct and motive are also relevant factors. It is not necessary, nor will it be generally possible to establish by direct evidence that the accused person did enter into such an agreement. The evidence of conspiracy is invariably to be found in the conduct of the parties and can be proved by circumstantial evidence and will depend upon the facts and circumstances of each case. It will not be proper for this Court to delve deep into various aspects and the material collected and to express any opinion on merit. It will be for the trial court to determine whether the evidentiary material on record would reasonably connect the accused with the crime making a ground for putting the accused on trial and/or to sustain conviction.

15. For granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced the Court has to take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, the position and the status of the accused with reference to the victim and the witnesses, reasonable apprehension of witnesses being tampered with, the larger interest of the public of the State and similar other circumstances. [Gurcharan Singh and Others Vs. State \(Delhi Administration\), ; State Vs. Jaspal Singh Gill, \]](#).

16. Taking into consideration the nature and gravity of the offence, the circumstances of the case, the position and status of the accused; and the reasonable apprehension of witnesses being tampered with, in my view, it is not fit,

proper and in the interest of administration of justice to admit the petitioner to bail.

17. This petition is accordingly dismissed.

18. The petitioner was granted stay against arrest by this Court. That order is hereby vacated. He shall surrender before the trial court forthwith.

19. Nothing stated hereinabove shall be considered to be as expression of opinion on the merits of the case.