

**State of Sikkim Vs. Rolland Christopher Chettri and anr.**

**State of Sikkim Vs. Rolland Christopher Chettri and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/497017](http://sooperkanoon.com/497017)

**Court :** Sikkim

**Decided On :** Mar-18-1988

**Reported in :** 1989CriLJ207

**Judge :** R. Dayal, J.

**Appellant :** State of Sikkim

**Respondent :** Rolland Christopher Chettri and anr.

**Judgement :**

ORDER

**R. Dayal, J.**

1. This revision is against the order dt. 5th Mar. 1988 passed by the learned Sessions Judge Incharge releasing the respondents on bail in a case registered against them under Sections 364, 302 and 201 read with Section 34 of the Penal Code.

2. The respondents are police officials, first respondent being a Sub-Divisional Police Officer and the second, a sub-inspector. On 20th Feb. 1988, the officer-in-charge, Naya Bazar Police Station, West Sikkim registered a first information report against them stating that it had been learnt from a reliable source that on 12-2-88 at about 1605 hrs., one Dharam Dutt Sharma of Timberbong busty was found absconded by the respondents and on way to Nayabazar the said Sharma

was murdered at Zoom Busty, West Sikkim and thereafter his dead body was disposed of by them on the other side of the river falling under Bizan Bari Police Station in Darjeeling District, West Bengal On that very date, the police started investigation and recorded the statement of one Shri Kishor Kumar Pradhan under Section 161 of the Criminal P.C. After recording his statement both the respondents were arrested on 21-2-88. Thereafter statements of two other witnesses were recorded. On 21-2-88 itself, that is, the date on which the respondents were arrested, a bail application was moved before the learned Sessions Judge Incharge and after giving some time on two occasions to the police to complete investigation, the impugned order of bail was passed on 5th Mar. 1988. The petitioner challenges the validity of the bail order on two grounds. One is that the learned presiding officer failed to consider whether there were reasonable grounds to believe that the respondents were guilty of offences punishable with death or imprisonment for life which was the mandatory requirement under the provisions of Section 497(1). The other is that the learned presiding officer did not give proper weight to the contention raised that there was apprehension of tampering with the witnesses by an order for bail.

3. The Criminal P.C., 1973 has not yet been extended to Sikkim and the provisions of the Criminal P.C., 1898 are still applicable subject to the Government of Sikkim, Home Department Notification No. 73/H dt. 30th Aug., 1963 according to which in all cases , where the Code of Criminal Procedure lays down the commitment proceedings, the Chief Magistrate's Court shall have the original jurisdiction and all such cases shall be filed before him directly for disposal. The Chief Magistrate's Court now means the Sessions Judge's Court. Sub-section (1) of Section 497 provides that when any person accused of or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. Proviso to that sub-section provides an exception, but that is not material for the instant case. Undoubtedly the mandate of the provision is that the Court does not have the jurisdiction to grant bail, if in the opinion of the Court there appear reasonable grounds for believing that such an offence had been

committed. Under Section 498, there is no such absolute bar regarding the jurisdiction of the High Court or the Court of Session, but the learned Advocate General contends that the expression 'a Court' in Sub-section (1) of Section 497 is wide enough to cover the Court of Session with the result that under that provision jurisdiction of the Session's Judge is barred if there were reasonable grounds for believing that the respondents were guilty of an offence punishable with death or imprisonment for life. He also urges that in the first instance an accused is expected to seek bail before a Magistrate and it is only when bail has been refused by the Magistrate and the case has made substantial progress that the accused is expected to approach the Court of Session or the High Court and, therefore, it is Section 497 that is applicable at the initial stage of investigation and not Section 498. I do not find myself persuaded to agree with the learned Advocate General that there is a jurisdictional bar for a Court of Session to grant bail at the initial stage of investigation for there are no such words of limitation in Section 498 and Section 497(1) should be read simultaneously with Section 498. However, it is true that an accused is expected to approach a Court of Session or a High Court after investigation has made substantial progress so that a seasoned judicial mind may consider having regard to the evidence and the circumstances revealed whether bail should be granted under Section 498 despite the bar provided by Section 497(1). But if a person accused of such an offence approaches the Court of Session or the High Court at the initial stage of investigation, though there is no absolute bar for such a Court to grant bail, yet the Court for all practical purposes has to consider it to be bound by such bar. In Sikkim it is more so because of the aforesaid notification under which an application for bail which is supposed to be moved before a Magistrate in the first instance ordinarily in other States has to be moved before the Sessions Judge since there are no commitment proceedings and the Court of Session directly entertains such cases. In any case, the Court of Session cannot be oblivious of the fact that under Section 497 no bail can be granted to any person accused of an offence punishable with death or imprisonment for life. The learned Counsel for the respondents also concedes that bail should not have been granted if there were reasonable grounds for believing that the accused were guilty of such an offence.

4. Therefore, the main point for consideration is whether there were reasonable grounds for believing that the respondents were guilty of such an offence. The case is still at the stage of investigation and three statements under Section 161 have been recorded. The dead body could not be recovered and the statements of other witnesses could not be recorded, as according to the learned Advocate General, because of continued tense situation in the Darjeeling District, the Sikkim Police could not get the co-operation of the West Bengal police in whose jurisdiction the dead body of the victim was buried. Kishor Kumar Pradhan, a police constable stated that the respondents met him at Soreng Bazar on 12-2-88 in the evening at about 15 14 hrs. and at the instance of the first respondent he accompanied them and showed them the house of the victim Dharma Dutt Sharma at Timberbong and also the house of the Head Constable Chatraman Limboo. He also stated that the first respondent had asked Chatraman Limboo to call the victim on some pretext without telling him that he had been sent for by him (first respondent). He further stated that the victim could be found in the house of one Kedarnath Sharma and then he was taken by both the respondents towards Chakyong in a Maruti Gypsy. He further stated that on 13-2-88 at about 5.30 p.m., the second respondent and one other person came to his house and then the second respondent told him that he had helped the victim to run away at Zoom Phatak while the S.D.P.O. had gone to urinate. He also said that on 16-2-88 at 4.30 p.m. the second respondent came to his house and told him that he had helped Dharam Dutt Sharma to run away and when the SDPO came to know about it he called the victim and then the victim haphazardly ran and fell from a cliff sustaining injuries on the right side of the temple, whereupon he was put in the vehicle but he died on the way. Further, he stated that on the same night the dead body was disposed of by them and in that connection they paid some money to some C.P.M. men for the disposal of the body. Chatraman Limboo has corroborated his statement by saying that the first respondent asked him and Kishor Kumar Pradhan to call the victim and they found him in the house of Kedarnath Sharma and then the first respondent took him in his vehicle. Some corroboration is also provided by the statement of Naik Tshering Lepcha the third witness. The learned presiding officer did not give proper consideration to the question as to whether there were reasonable grounds for believing that the

respondents were guilty of an offence punishable with death or imprisonment for life. He was of the view that further detention of the respondents was not necessary for the completion of the investigation and was undoubtedly carried by that consideration as if it was the only relevant consideration for the grant of bail in a case punishable with death or imprisonment for life. He observed that the alleged offence was said to have been committed on 12-2-88 and the dead body had not been traced and it was not understandable as to how long the fluid situation in Darjeeling Hill area would continue and there was no guarantee that the situation would improve even after the 40 days bandh called by the G.N.L.F. which would enable the Investigating Officer to cross over the river and recover the dead body. Further he said even if the situation improved within a day or two or even if the Investigating Officer could cross the river and visit the Singla area for the recovery of the dead body with the assistance of the Police force of Darjeeling, no purpose would be served, should the petitioners be detained in judicial custody any longer in Gangtok Jail for the prosecution conceded that his presence at the spot during the recovery of the dead body was not necessary. Then, he said that there was not a single witness who had seen the respondents committing the alleged act of murder and there is only circumstantial evidence which says that on the relevant day i.e. on 12-2-88 the victim was taken by the accused in their government vehicle for some interrogation. Thus regarding the prima facie case, it was observed that there was no direct eye-witness to the act of committing of murder though there was circumstantial evidence that the victim was taken by the accused.

5. As stated earlier, significant progress could not be made in investigation because the Sikkim Police could not get the cooperation of the Darjeeling Police due to agitation in the Darjeeling District. The question as to whether there are reasonable grounds for believing that the accused were guilty of an offence punishable with death or imprisonment for life is to be considered having regard to the stage of investigation at which the bail application is to be considered. The statements recorded under Section 161 reveal that the victim was last seen in the company of the respondents. It is clear from the statement of Kishor Kumar Pradhan and Chatraman Limboo that the accused were seriously making a search of the victim and when they found him they took him with them. As stated by

Kishor Kumar Pradhan the first respondent asked Chatraman Limboo not to reveal to the victim that he had been sent for by him but he should be called on some other pretext. Then there is the evidence that the second respondent gave the victim an opportunity to slip and thereafter when the first respondent called the victim, the latter began to run haphazardly and as a result thereof he sustained injuries and thereafter he died. Further there is the circumstantial evidence that the dead body of the victim was disposed of by the two respondents in Darjeeling District. The question is as to whether this evidence is not sufficient for believing that there were reasonable grounds for believing that the respondents were guilty of an offence under Section 302 or Section 364, I.P.C., former of which is punishable with death or imprisonment for life and the latter with imprisonment for life. The Supreme Court observed in *Pohalya v. State of Maharashtra* : 1979 CriLJ1310 that ordinarily, when a person is accused of committing murder of another, the fact that the accused and the deceased were last seen alive in company of each other and the failure of the accused to satisfactorily account for the disappearance of the deceased is considered a circumstance of an incriminating character. Following observations in *Gurcharan Singh v. State (Delhi Admn.)* AIR 1978 SC 179 : 1978 Cri LJ 129 are very pertinent : ---

22... It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437(1), Cr. P.C. and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence.

6. For considering at the initial stage of investigation for the purpose of bail, whether there are reasonable grounds for believing that an offence punishable with death or imprisonment for life had been committed it would be enough if there is some material for the accusation or even for strong suspicion of commission of such an offence. A brief description of the statements recorded under Section 161

made above shows that there was sufficient material fact or leading to such a belief but the learned Judge did not give any weight to this important aspect. He failed to consider that if there were reasonable grounds for believing that the accused were guilty of an offence punishable with death or imprisonment for life there could be no justification for granting bail at this stage, having regard to the provisions of Section 497(1).

7. The learned Counsel for the respondents however, contends that the evidence on record did not make out a case under Section 302 or Section 364 of the I.P.C. His contention is that though there is evidence that the victim was taken away by the accused, there is no evidence that the accused murdered him and the statement made by Kishor Kumar Pradhan that respondent No. 2 had told him that he had given the victim an opportunity to slip whereafter the victim ran and fell from a cliff resulting in his death showed that they were not guilty of murder. The fact that respondent No. 2 made such a statement does not mean that every part of the statement is true. The fact cannot be ignored that the respondent No. 2 is himself involved in the matter. He had reason to attempt to get rid of the accusation of murder. The question is not whether the evidence, if produced and remains unrebutted at the trial, would sustain the charge of murder but is merely whether there are grounds for believing that the accused were guilty of such an offence. Regarding the offence under Section 364 there is clear evidence that the victim was taken by the respondents. Whether he was induced to go by deceitful means is a matter for further investigation,

8. While granting bail, the learned Judge also failed to give proper weight to the apprehension of the prosecution that by the order of bail the witnesses would be tampered with. He did not give any weight to the relationship and the status of the victim to the accused who are police officials. He observed that this apprehension could be allayed if the movement of the accused was restricted to Gangtok area and so he imposed certain conditions. It is difficult to appreciate how the apprehension regarding the tampering of witnesses could be allayed by any restriction of movements of the accused to Gangtok area or by requiring them to report to the Court on every alternative day. The question as to the likelihood of tampering with the prosecution witnesses relates to ensuring a fair trial of the case

in a Court of justice and is, therefore, of paramount consideration to be given due weight, while considering a bail matter. On the facts of the case, the apprehension expressed by the prosecution in this regard could not be said to be unjustified and even the learned Judge did not find it to be so. In the result, the impugned order suffers from illegality inasmuch as weight was not given to relevant aspects of the matter.

9. Accordingly I allow the revision, set aside the impugned order of bail, cancel the bail bonds and direct that the respondents be taken into custody forthwith.

10. The respondents are in Court and , have been taken into custody. They be remanded to jail.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**