

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.17516 of 2015

Date of Decision: June 03, 2015

Nishan Singh

...Petitioner

Versus

State of Haryana

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Ms.Puja Chopra, Advocate,
for the petitioner.

Ms.Tanisha Peshawaria, DAG, Haryana,
for the State.

Mr.D.S.Patwalia, Senior Advocate with
Mr.Harkanwarjit Singh, Advocate,
for the complainant.

AMIT RAWAL, J.

Prayer in the petition is for grant of regular bail to the petitioner, who is stated to be behind bar for a period of more than two years for commission of alleged offence punishable under Sections 302/307/148 and 149 IPC in FIR No.216 dated 24.11.2012 registered at Police Station Ellenabad, District Sirsa.

Ms.Puja Chopra, learned counsel appearing for the petitioner submits that the prosecution has examined almost 26 witnesses and only

four witnesses are left to be examined, out of which two are police officials and two are doctors. She submits that the petitioner is entitled to benefit of bail on the basis of the documentary evidence brought on record, being prosecution documents and by referring to the medico legal report dated 23.11.2012 of deceased Rishpal Singh son of Gurbachan Singh, whereby the deceased was examined and on the basis of the examination, four injuries were found on the leg below knee, right ankle, left ankle and left wrist and there was no injury noted by the doctors on his chest vis-a-vis the alleged fracture on the ribs or internal injuries and the deceased was referred for X-ray to the Civil Hospital, Sirsa, but the relatives of the deceased took him to Sarvodaya Multispeciality Hospital, Hisar, where the relatives of the deceased with connivance of the doctors of the Hospital, managed to procure report vis-a-vis fractures on his ribs as well as surgery diaphragm and to the peritoneal cavity. She further submits that one Nishan Singh Harniya, who is alleged to have given a kick of his shoe in the abdomen of Rishpal Singh, which is evident from his statement dated 5.12.2012 recorded under Section 161 Cr.P.C. (Annexure P-9), has been granted bail, whereas petitioner, who is Nishan Singh Bogal, has been attributed a blow with a tip of lathi on his ribs. Thus, the statement of the deceased does not corroborate with the medical record, i.e., MLR (Annexure P-3). She further submits that even the wife of the deceased and her brother have also turned hostile and have not supported the prosecution version. She argued that the medical reports of the Sarvodaya Hospital, Hisar had been under scrutiny by various Courts, including this Court as it had been found that they are indulging into manufacturing of the reports. In support of her submission,

she also cited judgment of the Hon'ble Supreme Court in **B.N.Kavatakar Versus State of Karnataka, 1994 (Sup1) SCC 304** and of this Court in **Sumer Chand Versus State of Haryana etc., 1998(1) R.C.R.(Criminal) 399** to say that where deceased had died on account of septicemia, the person cannot be convicted for the commission of offence under Section 302 IPC and the said offence was reduced to Section 326 IPC and, therefore, the petitioner is also entitled to concession of regular bail. She further submits that the deceased has died 38 days after the alleged occurrence and, therefore, the death could not have been caused to the alleged injuries attributed to the various accused, but it is owing to the infection, i.e., septicemia.

Ms.Ms.Tanisha Peshawaria, DAG, Haryana, for the State assisted by Mr.D.S.Patwalia, learned Senior Counsel for the complainant submits that one doctor of the Sarvodaya Hospital and another doctor plus two witnesses of the police have to be examined after giving up seven witnesses. In support of their submission, they have referred to the statement of Dr.Suresh Chabra, Senior Consultant Surgeon, Max Hospital, Sushant Lok Gurgaon, who has stated in his examination-in-chief that the deceased was diagnosed to be having multiple injuries, left chest injury, abdominal trauma, fracture right femur, right ankle and left collis fracture and further ribs both sides and even as per the X-ray of the Sarvodaya Hospital, the deceased had suffered fracture of various ribs and, therefore, the death has been caused on account of the septicemia, which has been contracted on account of the fracture on the ribs and splenic injury and, therefore, the petitioner is not entitled to concession of bail.

I have heard learned counsel for the parties.

Since the trial Court is seized of the matter with regard to the nature of death, i.e., either being caused owing to the injuries received by the deceased or owing to the infection caused during the surgery performed at Sarvodaya Hospital, it is too premature to form an opinion that the deceased died owing to the injury attributed to the petitioner.

It is a matter of record that Nishan Singh Harniya, as per the statement of the deceased recorded under Section 161 Cr.P.C., who has caused shoe blow on his abdomen, has been granted bail, however, the petitioner is already incarceration for a period of more than two years and one of the doctor, who is yet to be examined, has gone abroad and the conclusion of the trial may take some time. So, I deem it appropriate to grant concession of regular bail to the petitioner.

Without expressing any opinion on the merits of the case, bail to the satisfaction of the CJM/Duty Magistrate, Sirsa.

The petition is accordingly allowed.

June 03, 2015
ramesh

(AMIT RAWAL)
JUDGE