

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM No. M-20320 of 2015 (O&M)
Date of Decision: 29.6.2015

Sanket Joshi

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:-HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. S.K. Yadav, Advocate for the petitioner.

Mr. Satish Saini, D.A.G., Haryana.

Mr. Jai Vir Yadav, Advocate for the complainant.

TEJINDER SINGH DHINDSA.J

The instant petition has been filed under Section 439 Cr.P.C praying for grant of regular bail to the petitioner in case F.I.R. No. 658 dated 30.12.2014 under Sections 148, 149, 323, 307, 302 I.P.C and sections 25, 54, 59 of Arms Act, registered at Police Station, Mohindergarh, District Mahendergarh.

Learned counsel for the parties have been heard at length.

Deceased in the present case is Kukku and the date of occurrence is stated to be of 30.12.2014. F.I.R was registered on the statement of Ajit son of Hanuman, who is also stated to have suffered a head injury in the occurrence.

As per initial statement of Ajit son of Hanuman, who was an eye witness as also injured in the occurrence, the present petitioner was very much present at the spot but the direct attribution of a pistol shot having been fired in the eye of Kukku (since deceased) is to Rabbu Nai.

That apart, the direct allegation is against Hemant of being armed with a

wicket and having given a blow on the head of the complainant himself.

Even in a supplementary statement recorded of Ajit four days after the occurrence i.e. on 4.1.2015 there is no direct attribution to the present petitioner in so far as being armed and of having given any injury to the deceased.

It has gone uncontroverted that as per Post Mortem Report the cause of death of deceased Kukku is of a solitary gun shot injury suffered in the eye.

Learned State counsel as also learned counsel for the complainant namely Ajit have vehemently opposed the prayer made in the present petition by submitting that the present petitioner was an active conspirator in the occurrence that took place and there was even a clear motive for having done Kukku to death. In this regard it has been submitted that the present petitioner along with other co-accused had indulged in teasing real sister of deceased Kukku and on having been rebuked on such count, the occurrence had taken place and in which Kukku had died of gun shot injury. To substantiate such assertion counsel appearing for the complainant has even adverted to an affidavit having been submitted before the investigating agency of one Raku Yadav daughter of Nihal Singh in which she had specifically named the present petitioner along with other boys of having teased her. Counsel has even adverted to certain call records pertaining to the mobile phone number of the present petitioner in which a number of calls have been exchanged with the co-accused immediately after the occurrence.

Be that as it may, it would be apposite to take note of statement of Meena daughter of Nihal Singh at Annexure P-2 and who happens to be the real sister of deceased Kukku and in which there is no reference to the present petitioner having teased the other sister of deceased Kukku. It would be pertinent to make a mention that Meena was present at the spot at the time of occurrence and in case her own sister was allegedly teased by the present petitioner, the same would have found a mention in her statement recorded under Section 161 Cr.P.C.

Petitioner has been in custody since 1.1.2015. Investigation in the present case having been completed challan was presented on 24.3.2015. The trial is still at the initial stage.

Keeping in view the totality of circumstances and particularly in view of the fact that no direct role/injury has been attributed to the present petitioner, the question as to whether offence under section 302 I.P.C would be made out against the present petitioner would be a moot question to be considered during the process of trial.

Accordingly, present petition is allowed.

Petitioner be enlarged on bail subject to satisfaction of Trial Court/Duty Magistrate, Mahindergarh.

It is, however, clarified that the observations contained in this order are confined only as regards considering the prayer of the petitioner for grant of benefit of regular bail and would have no bearing on the merits of the trial proceedings.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

29.06.2015
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