

101-A

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.30881 of 2015
Date of Decision: 15.09.2015

SUKHDEEP SINGH

.....Petitioner

Vs

STATE OF PUNJAB & ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.B.S. Sobti, Advocate
for the petitioner.

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?*

RAJ MOHAN SINGH, J. (Oral)

[1]. Prayer in this petition is for cancellation for regular bail granted to the respondent No.2 Gursharan Singh @ Micky vide order dated 29.04.2015 on the ground that the deceased made a statement on 13.09.2013 which was duly signed by the Doctor in which prosecution story has been duly corroborated. The said statement is dying declaration and, therefore, concession of bail granted to respondent No.2 is based on incorrect appreciation of prosecution story.

[2]. Learned counsel for the petitioner-complainant states that the statement of the then injured (deceased) was recorded by the Investigating Officer in the presence of Doctor after obtaining the

opinion of the Doctor regarding fitness of the injured to make statement on 13.09.2013. With the recording of statement of Baljinder Singh @ Tidda, delay, if any, stood explained and statement is admissible as a dying declaration under Section 32 of Indian Evidence Act. This part of prosecution story was concealed by the petitioner/respondent No.2 while seeking regular bail in this Court.

[3]. Learned counsel relies upon 2010(1) RCR (Crl.) 249, Jai Krishan v. The State of Punjab and others, 2014(2) Law Herald (SC) 947, Pooja Bhatia v. Vishu Narain Shivpuri and another and 2013(4) RCR (Crl.) 1055, Sita Ram v. Balbir @ Bali and another to contend that fraud vitiates all solemn acts. Concession of bail obtained by concealment of fact vitiates everything and the order based on such fraud has to be recalled. Power to cancel bail on judicial consideration is unfettered and even this exercise can be done by the Court *suo motu* without there being any application on behalf of the complainant. No person can be beneficiary of his own fraud.

[4]. I have considered the submission made by the learned counsel for the petitioner-complainant.

[5]. The petitioner seeks cancellation of regular bail granted to respondent No.2, on the basis of re-appreciation of prosecution evidence. Regular bail was granted in FIR No.130 dated 24.08.2013, under Sections 323, 341, 324, 325, 326, 307, 382, 148, 149, 506

IPC. Offence under Section 302 IPC was added later on.

[6]. At the stage of considering regular bail, this Court *prima facie* considered that the aforesaid FIR was registered in respect of occurrence took place on 21.08.2013. The injuries allegedly received by Baljinder Singh @ Tidda were on the lower part of his body. The injuries attributed to the accused/respondent No.2 is an iron rod blow on the left leg of Baljinder Singh @ Tidda.

[7]. This Court while granting regular bail has also considered total number of injuries found on the person of Baljinder Singh @ Tidda to be on knee, hand, tibia, ankle and elbow. No injury was found on the upper part of the body. Cause of death has been shown to be multiple fractures and shock followed by multi-organ failure.

[8]. The incident of belaboring Baljinder Singh @ Tidda with numerous injuries was allegedly witnessed by the complainant, who did not come to rescue the deceased, nor received any injury. The delay coupled with the death having taken place 24 days after the occurrence are the mitigating circumstances which prompted this Court to *prima facie* consider the prosecution case for the grant of regular bail to the accused.

[9]. Learned counsel for the accused during the course of arguments cited precedents to seek indulgence of this Court to take such *prima facie* view at this stage.

[10]. It is relevant to note that at the time of grant of regular bail, complainant-party was duly represented by his counsel, who argued

the case with reference to material on record and assisted the State counsel.

[11]. I have considered the prayer. This Court finds that the complainant/petitioner seeks re-appreciation of prosecution story for the purposes of cancelling the regular bail which according to this Court is not worth acceptance.

[12]. In view of above, no ground to interfere in this petition is made out, accordingly the same is dismissed.

Sept.15, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE