

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM No.M-37553 of 2014

Date of Decision: February 05, 2015

Kala Singh @ Hardip Singh

.... Petitioner

vs.

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. S.P.S. Sidhu, Advocate for the petitioner.

Mr. Nikhil K. Chopra, Deputy Advocate General, Punjab.

1. Whether Reporters of Local Newspapers 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?

Kuldip Singh J.(Oral)

Petitioner Kala Singh @ Hardip Singh son of Chamkaur Singh, resident of village Saido Ke, Tehsil Nihal Singh Wala, District Moga has filed this petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.63, dated 07.07.2013, under Sections 302, 148 and 149 of the Indian Penal Code, 1860 (in short 'IPC') and under Sections 25 and 27 of the Arms Act, 1959, registered at Police Station Nihal Singh Wala, District Moga.

As per allegations levelled in the FIR, on 06.07.2013, at about 7.30 p.m., Amandeep Singh along with his uncle Gurjant Singh were coming back from their fields on motor cycle CD Delux. When they reached near Basti of Borian, Chamkaur Singh @ Darake

armed with *gandasa*, Kala Singh @ Hardip Singh (present petitioner) armed with a spade, Mander Singh and Sukhdev Singh sons of Hakam Singh armed with sticks were found beating his uncle Jagjit Singh. They got down from the motor cycle to rescue Jagjit Singh. In the meanwhile, Jagmohan Singh @ Mohini, who was going towards his fields on the motor cycle also came at the spot. All the three, namely, Amandeep Singh, Gurjant Singh and Jagmohan Singh @ Mohini were rescuing Jagjit Singh. In the meanwhile, Varinderjeet Singh @ Master came there on his grey colour Indica car. Chamkaur Singh @ Darake raised exhortation to catch hold, not to spare and teach a lesson to the complainant party for opposing them in the Pachayat election. Varinderjeet Singh @ Master came out of the car and took out a pistol from his dub and fired a shot at Gurjant Singh, which hit on his chest. Second shot fired by Varinderjeet Singh @ Master, hit Jagmohan Singh @ Mohini on the right side of his chest. Both of them fell down and died.

Petitioner Kala Singh @ Hardip Singh along with others were arrested by the police.

It also comes out that now the trial is going on and Amandeep Singh and Jagjit Singh have been examined by the trial court.

I have heard learned counsel for the parties and have also carefully gone through the record.

Learned counsel for the petitioner has argued that in this case, the occurrence took place in two parts. In the first part,

Chamkaur Singh @ Darake, Kala Singh @ Hardip Singh, Mander Singh and Sukhdev Singh were allegedly giving beating to Jagjit Singh and that Amandeep Singh, Gurjant Singh and Jagmohan Singh @ Mohini intervened to rescue Jagjit Singh.

It is stated on behalf of the State that in this case, Jagjit Singh was not medico legally examined nor he has stated so in his examination during trial, copy of which has been produced on the file.

The second part of the occurrence is that when Jagjit Singh was being rescued, Varinderjeet Singh @ Master came there on his grey colour Indica car, Chamkaur Singh @ Darake raised exhortation for teaching them a lesson and Varinderjeet Singh @ Master fired shots at Gurjant Singh and Jagmohan Singh @ Mohini, who died as a result of gunshot injury.

It has been argued that even exhortation is not attributed to the present petitioner Kala Singh @ Hardip Singh.

Even after investigation, Mander Singh and Sukhdev Singh were not challaned. No injury was found on the person of Jagjit Singh. It has also been argued that the present petitioner has nothing to do with the act of Virenderjeet Singh @ Master in firing two gunshots at Gurjant Singh and Jagmohan Singh @ Mohini.

It is further argued that the common intention qua the present petitioner in the commission of murder by Virenderjeet Singh @ Master cannot be assumed, in view of the facts alleged by complainant Amandeep Singh, which have been repeated in the evidence during trial.

Taking into consideration the facts and circumstances of the case and the fact that the allegations against the present petitioner are only of beating Jagjit Singh and that Jagjit Singh was not medico legally examined and no role is attributed to the petitioner in the firing shots by Virenderjeet Singh at Gurjant Singh and Jagmohan Singh @ Mohini, I am of the view that it is debatable whether Section 149 or Section 34 IPC could be attracted qua the petitioner holding him liable under Section 302 IPC.

In view of the matter and keeping in view the fact that the main witnesses have been examined, further detention of the petitioner is considered groundless. Accordingly, the petition is allowed. Petitioner Kala Singh @ Hardip Singh is ordered to be released on bail on his furnishing personal bonds in the sum of ₹1,00,000/- with one surety of the like amount to the satisfaction of the trial court, subject to the following conditions:

- i) The petitioner will continue to appear on each and every date of hearing.
- ii) He will not tamper with the evidence.
- iii) He will not indulge in any criminal activity.
- iv) He will not leave the country without prior permission of the court.

February 05, 2015
sarita

(KULDIP SINGH)
JUDGE