

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

**Criminal Misc. M-41508 of 2013 (O&M)
Date of Decision: 13.3.2015**

Sukhdev

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Arvind Singh, Advocate
for the petitioner.

Mr. Ashish Yadav, A.G. Haryana.

Mr. Rahul Gautam, Advocate
for the complainant.

RAMESHWAR SINGH MALIK J.(ORAL)

Petitioner seeks bail pending trial in FIR No. 266 dated 26.7.2011 under Sections 302/201/452/323/506/34 IPC registered at Police Station Indri, Karnal.

Learned counsel for the petitioner refers to the contents of FIR as well as statement of PW3-Dr. Dalbir Singh, who was the Chairman of the medical board and conducted the post mortem on the dead body of deceased-Mukesh Kumar. He submits that in all, five injuries were found on the dead body. Injuries Nos. 1 and 2 were on the left middle finger whereas injuries No. 3 to 5 were contusions of different sizes. Medical board was unanimous in its opinion that

injuries No. 3 to 5 present on the body of the deceased, vide PMR 15865 dated 29.7.2011 were not sufficient to cause death, individually or collectively, in ordinary course of nature. It was further opined by the medical board that no definite opinion regarding the sub aponeurotic haematoma could be given as the brain was in the stage of deposition and liquefied. He further submits that it will be seen at the time of trial as to whether there would be sufficient material against any of the accused. Since application under Section 319 Cr.P.C has been allowed by the learned trial court summoning two more persons as additional accused, trial will take pretty long time, because only 3 PWs have been examined. He concluded by submitting that since after allowing application under Section 319 Cr.P.C. it would be almost *de novo* trial, petitioner deserves concession of bail pending trial.

On the other hand, learned counsel for the State submits that offences under Sections 302/201 and 452 IPC, were serious in nature. He further submits that only because injuries Nos. 3 to 5 were not sufficient to cause death in the ordinary course of nature, this reason cannot be a ground for granting concession of bail to the petitioner. So far as allowing of application under Section 319 Cr.P.C. is concerned, learned counsel for the State, on instructions from ASI Satyawar, Police Station Indri, District Karnal, submits that it was a matter of record. Finally, he prays for dismissal of the petition.

Adopting the arguments raised by learned counsel for the State, learned counsel for the complainant submits that there were

direct and serious allegations against the petitioner. He further submits that there was last seen evidence also against the petitioner, coupled with the statement of Nirmal Singh under Section 161 Cr.P.C. recorded on 19.8.2011. He also prays for dismissal of the petition.

Having heard the learned counsel for the parties and without expressing any opinion on the merits of the case, lest it should prejudice the rights of the either of the parties, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, instant petition deserves to be allowed and the petitioner is entitled for the concession of bail pending trial. It is so said, because after allowing application under Section 319 Cr.P.C., trial is not likely to be concluded in the near future.

In view of the above, instant petition is allowed. Petitioner is ordered to be released on bail pending trial subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Karnal.

So far as issuance of show cause notice to Som Parkash, vide order dated 1.5.2014 is concerned, this accused was granted bail pending trial vide self contained order dated 6.11.2013 passed by this Court in CRM-M-27828 of 2013 and that too, after hearing the learned counsel for the parties, including learned counsel for the complainant as well as learned counsel for the State.

It has not been disputed before this Court by the learned counsel for the State as well as learned counsel for the complainant that statement of Nirmal Singh recorded under Section 161 Cr.P.C

does not form part of the final police report under Section 173 Cr.P.C.. Since this was the primary reason for issuing show cause notice to Som Parkash vide order dated 1.5.2014 that the statement of Nirmal Singh under Section 161 Cr.P.C. was not brought to the notice of this Court at the time of passing the order dated 6.11.2013, this cannot be made the sole basis for cancellation of bail already granted to him. It is so said, because the investigating agency thought it appropriate not to make the statement of Nirmal Singh under Section 161 Cr.P.C. as part of the challan presented to the Court.

In view of the above, show cause noticed issued to Som Parkash by this Court, vide order dated 1.5.2014 is withdrawn.

Disposed of, accordingly.

(RAMESHWAR SINGH MALIK)
JUDGE

13.3.2015
AK Sharma