

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 29.4.2015

CRM-M No. 43481 of 2014

Gursharan Singh @ Micky

.....Petitioner

Versus

State of Punjab

.....Respondent

CRM-M No. 7446 of 2015

Jagpal Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Jagjit Singh Bedi, Sr. Advocate with
Mr.Lovekirat Singh Chahal, Advocate,
for the petitioners.

Mr.Varun Sharma, AAG, Punjab.

Mr.Jagdeep Singh Bajwa, Advocate with
Mr.G.B.S.Dhillon, Advocate,
for the complainant.

RAJ MOHAN SINGH, J.

Vide this common order, CRM-M No. 43481 of 2014 and

7446 of 2015 are being disposed of. The facts are taken from CRM-M No. 43481 of 2014.

Prayer is for grant of regular bail in case bearing FIR No. 130 dated 24.8.2013, registered at Police Station Dehlon, District Ludhiana, under Sections 323, 341, 324, 325, 326, 307, 382, 148, 149, 506 IPC. Offence under Section 302 IPC was added later on.

FIR came to be registered on the statement of Sukhdeep Singh, who alleged that on 21.8.2013, he along with his uncle Baljinder Singh @ Tidda were coming from Ludhiana to their village Narang Wal Kalan after attending court proceedings in a criminal case under Section 307 IPC. Complainant alleged that prosecution party i.e. Jagpal Singh etc. were chasing them from court premises. At about 7/7.30 P.M., Baljinder Singh stopped at a shop for purchasing a CD, then a car and one Scorpio came from the side of Mehma Singh Wala Chowk. Jagpal Singh was armed with an iron *daah*; Gurjant Singh @ Janta was armed with iron *daah*; Darshan Singh was armed with iron sword; Shaminder Singh was armed with iron road; petitioner Micky was armed with sword and Gurjeet Singh Lambardar was armed with stick. They were accompanied with 3-4 unidentified persons, who were also armed with iron rods. All of them came out from their respective vehicles. Gurjeet Singh made a *lalkara* that Baljinder Singh be killed and all the assailants encircled him. Complainant further alleged that Gurjeet Singh gave a stick blow on the head of Baljinder Singh with intention to kill him but he warded off the blow by raising his arm and the blow landed on his left

arm wrist. Baljinder Singh fell down on the earth, then Jagpal Singh gave an iron rod blow on his left leg. Gurjant Singh inflicted iron rod blow on the left leg of Baljinder Singh. Harnam Singh gave sword blow on the left leg. Micky gave a sword blow on the left leg. Shaminder Singh gave a rod blow on the right leg and other unidentified persons also gave blows with their respective weapons on the person of Baljinder Singh. Complainant is alleged to have seen the occurrence. Thereafter, all the assailants ran away after giving threats. Baljinder Singh was stated to be in serious condition and blood was infused in his body. His kidneys stopped functioning. The cause of assault was stated to be a spate ensued on 29.1.2012 when Jagpal Singh and others caused injuries to Baljinder Singh and in defence Baljinder Singh also caused injuries to Jagpal Singh and others.

According to MLR, 14 injuries are shown on the person of Baljinder Singh. The injuries are on knee, hand, tibia, ankle and elbow. No injury is shown to have been inflicted on the upper part of the body. The cause of death is multiple fractures and shock followed by multi organ failures.

Learned counsel for the petitioners argues that the complainant of the present case is a non injured witness. It is highly imaginary to see that despite belaboring injured Baljiinder Singh with numerous injuries by the assailants, the complainant did not receive any injury and no effort was made by him to rescue Baljinder Singh. Learned counsel further states that in fact it is a case of blind

murder and delay of 72 hours in lodging the FIR was utilized in order to introduce falsehood. Learned counsel further attacks on the fallacy in prosecution case that despite attributing numerous injuries to number of accused persons, only two accused, namely, Gursharan Singh @ Micky (present petitioner) and Jagpal Singh have been found by the prosecution to be involved in the present occurrence. Other accused were found innocent. According to learned counsel, the prosecution has tried to explain the delay on the ground that the same occurred while arranging blood. However, as per prosecution case on record the delay remains to be unexplained on alleged pretext. The death took place after 24 days of the occurrence i.e. on 15.9.2013. Learned counsel further states that all the injuries are on the non vital parts of the body and are not sufficient to attract culpability in terms of Sections 307 and 302 IPC.

Learned counsel for the petitioners cites the judgment of the Apex Court in **Vijay Singh and another vs. State of Madhya Pradesh, 2014 (2) RCR (Crl.) 340** to contend that in a case where accused caused injuries on the neck and face with *farsa* and *Ballam* and the doctor gave opinion that the death took place on account of shock and excessive bleeding due to injuries, then the accused was found to have committed offence under Section 307 IPC only and not under Section 302 IPC. Again it has been argued that if the victim could have been saved by timely medical aid, then the conviction is to be altered under Section 326 IPC only. The grievous hurt with the injuries on legs would be in the nature of Section 326 IPC only.

Learned counsel further argues with reference to State of A.P. vs. Naragudem Papireddy and others, 2004 (2) Crimes 194 and Parusuraman @ Velladurai and others vs. State of Tamil Nadu, 1991 (3) RCR (Crl.) 641 that grievous hurt in the form of fractures on lower part of body, nature of injuries and the manner of attack did not attract intention to cause death. Injuries on the lower leg and arms resulting in death would fall under the mischief of Section 325/34 IPC and not under Section 304 IPC.

Learned State counsel, however, refutes the contention of learned counsel for the petitioners by arguing that the injured Baljinder Singh was belabored by the accused with number of injuries and it is the shock which caused his death. The argument raised at the bar would remain to be debatable in the context of availability of medical opinion on the report of histopathy, but facts remain that all the injuries are on lower portion of the body. The curtailment in number of accused persons thereby reducing only to the extent of the petitioners would also be a relevant factor to be debated at trial. The delay coupled with medical opinion and precedents cited at the bar would be relevant at this stage to allow the petitioners benefit of regular bail without opining anything on merits.

Without adverting to any evidence on merits, at this stage, it would be just and appropriate to release the petitioners on regular bail. Accordingly, these petitions are allowed. Let the petitioners be enlarged on bail, subject to furnishing adequate bail

bonds/surety bonds to the satisfaction of Chief Judicial
Magistrate/Duty Magistrate, Ludhiana.

(RAJ MOHAN SINGH)
JUDGE

April 29, 2015
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