

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

***CRM No.M-10920 of 2016 (O&M)
Date of decision: 16.05.2016***

Harish Behal

... Petitioner

Vs.

State of Punjab & another

... Respondents

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

Present: Mr. M.S. Sachdev Advocate for the petitioner.

Mr. K.D. Sachdeva, Additional Advocate General, Punjab.

Mr. PBS Goraya, Advocate for
Ms. Ishima Randhawa, Advocate for the complainant.

...

TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 439 Cr.P.C. seeking benefit of regular bail to the petitioner in criminal complaint bearing RBT Case No.12 of 24.09.2011/31.05.2014 titled as Bua Singh versus Ashok Kumar & others, under Sections 302/364/120-B IPC and wherein the petitioner has been summoned to face trial vide order dated 23.01.2015 by the learned Judicial Magistrate 1st Class, Amritsar.

Briefly, it may be noticed that the complaint was lodged with the assertions that the family members of the complainant were supporters of the Congress Party and Ajay Kumar (accused No.3), who was close to an M.L.A. of the ruling party in the State of Punjab had got registered FIR against brother of the complainant, namely, Bawa Singh as also Balwinder Singh @ Bind etc. As per allegations, Bawa Singh was picked up by ASI Paramjit Singh (accused No.4) and ASI Dilbagh Singh (accused No.5) on

27.07.2011 and taken to Police Station Faijpura. On 28.07.2011, complainant and his family members came to know that Bawa Singh was taken to Police Station Majitha Road. Complainant as also other persons from the Mohalla having gone to Police Station Majitha Road, they found one Kabir Sharma (accused No.8) present at the Police Station and who was P.A. to one Anil Joshi, M.L.A. and who stated that since Bawa Singh is in collusion with opposite party, he would now be taught a lesson. Complainant further alleged that on 28.07.2011, when he again went to Police Station Majitha Road and no high ranking officials were present then the Constable on duty allowed him to meet Bawa Singh and who in turn told him that Sub Inspector Harish Behl, S.H.O. of the Police Station/present petitioner along with other police officials had resorted to beating him and torturing him. On 29.07.2011, Bawa Singh was produced in the Court and sent to police remand for one day. On the intervening night of 29/30.07.2011, Bawa Singh was again subjected to torture in Police Station Majitha Road. On 30.07.2011, Bawa Singh having been produced in Court was sent to judicial custody. On 01.08.2011, mother-in-law of Bawa Singh went to Central Jail, Amritsar to meet him but he was not brought forth for the meeting and on 02.08.2011, complainant and his family members came to know that death of Bawa Singh had occurred on 01.08.2011 itself.

Afore-noticed is the brief backdrop of allegations raised by the complainant upon which the complaint dated 24.09.2011 (Annexure P-1) is founded and which has further led to the passing of the summoning order dated 23.01.2015 (Annexure P-2), whereby the present petitioner Harish Behl, Sub Inspector has been summoned.

Learned counsel for the petitioner while praying for grant of

bail to the petitioner would submit that Bawa Singh (since deceased) was arrested on 28.07.2011 in connection with FIR No.253 dated 27.07.2011. It is contended that on two occasions i.e. on 29.07.2011 and 30.07.2011, medical examination had been conducted and wherein it was opined by the doctor concerned that there was no fresh injury on the person of Bawa Singh and it is only thereafter having been remanded to judicial custody that Bawa Singh was left at Central Jail, Amritsar on 30.07.2011. It is argued that this in itself would indicate that no injuries on account of beatings/torturing were inflicted upon Bawa Singh while at Police Station Majitha Road. It has further been argued that there is not even an iota of evidence against the present petitioner to connect him with the commission of alleged crime and he is being sought to be implicated only on account of being posted as Sub Inspector, S.H.O. of the concerned Police Station. Counsel has also argued that the complaint itself shows certain political ramifications and that Bawa Singh (since deceased) having been allegedly beaten up/tortured at the behest of Anil Joshi and even though in the complaint it had been alleged that such politician was present at the Police Station when the complainant and his family members had gone there, yet such person has not been summoned in the case whereas the present petitioner has been singled out only because he happen to be the Station House Officer, In-charge of Police Station Majitha Road.

Counsel for the parties have been heard and the pleadings on record have been perused.

It has gone uncontroverted that under the directions of the District and Sessions Judge, Amritsar, inquiry was conducted at the hands of Judicial Magistrate 1st Class, Amritsar pertaining to custodial death of an

under-trial Bawa Singh. Such report stands placed on record and appended as Annexure P-11. Perusal of the same would show that the death of Bawa Singh has been opined to “**unnatural death**”.

The post mortem examination on the body of deceased Bawa Singh was conducted on 02.08.2011 by Dr. Manpreet Kaur and Dr. Jatinderpal Singh. As many as 12 injuries were noticed on the body of deceased, Bawa Singh and the relevant extract of the Post Mortem Report reads as under:

“On examination, the length of body was 6 feet 6 inches, physique was medium and body was average built. Rigor mortis was present throughout body except neck and left limb (upper) postmortem staining was present on back sparing areas of contact flattening. Conjunctivae was suffused. Straw coloured nasal discharges was present. Semen was present at tip of penis. Following injuries were present on the person of deceased:-

- 1. 9x6 cm reddish bruise was present on the top of right shoulder. On the dissection infiltration was present in underlying muscles.*
- 2. 4x2.5 cm reddish blue bruise was present on the outer aspect of right upper arm 16 cm below top of shoulder.*
- 3. 6.8x4.5 cm and 5x3.8 cm bluish bruises was present on right palm over hyporthanar and thenar aspect respectively.*
- 4. In an area of 4.8x2 cm brownish abrasion with scab was present on antendor aspect of right leg in its middle one third, 4 in number and size varying from 2x1.5 cm to 0.5x0.4 cm.*
- 5. Multiple postmortem pale abrasions were present on lateral and lower 1/3 of right leg and dorsum of right foot. Skin was found missing at places and nibbling of margins was present. No infiltration was seen.*
- 6. 13x6.5 cm bluish brown bruise was present on top of left shoulder and outer 1/3 of upper arm. On dissection*

infiltration was present in under lying muscles.

7. *1.3x0.5 cm reddish brown abrasion was present on medial aspect of left elbow, 3.5 cm medial to tip of elbow prominence.*

8. *24x2 cm reddish brown abrasion was present on back in right lumbar region, and was vertically placed.*

9. *19x12 cm reddish brown bruise was present on right gluteal region on dissection haematoma was present in under lying muscles.*

10. *Multiple reddish brown abrasion, 3 in number size varying from 0.5x0.4 cm to 0.5x0.1 cm on back of right index finger, middle and ring finger.*

11. *Diffuse swelling was present on head, in right temporoparietal region.*

12. *1.2x0.7 cm reddish brown abrasion was present on dorsum of left foot, 4.5 cm in front of medial malleolus.”*

Contention of the counsel appearing for the complainant is that the 12 injuries noticed in the Post Mortem Report itself are a clear pointer of brutal torture while in police custody.

Counsel for the complainant has also made an attempt to create a dent in the contention raised on behalf of the petitioner as regards medical examination of Bawa Singh (since deceased) having been conducted on 29.07.2011 and 30.07.2011 and no injuries having been noticed at such point of time and only thereafter Bawa Singh having been sent to Central Jail, Amritsar upon remand in judicial custody. In this regard, it is submitted by counsel appearing for the complainant that the medical examination of Bawa Singh was confined only with respect to any fresh injury marks. To such extent, counsel appearing for the petitioner would not join issue.

Counsel appearing for the complainant would then argue that

Dr. Amritpal Singh, Medical Officer, Central Jail, Amritsar upon having

been examined as CW-10 had clearly deposed that fresh injury marks would generally be construed in relation to injuries that may have occurred within the time span of few hours.

It would be pertinent to take note of the deposition of Dr. Manpreet Kaur, who was examined by the complainant as CW-4 being the doctor who had conducted the post mortem examination on 02.08.2011 and who had clearly stated that except for injury No.5, all the other injuries were ante-mortem and clearly stated that injury No.1 was within 12 hours, injuries Nos.2, 3 and 11 were within about 12 to 24 hours, injury No.4 within about 4 to 7 days, injuries Nos.7, 8, 12 and 13 were within 2-3 days and injuries Nos.6 and 9 within 2 to 4 days.

As per counsel appearing for the complainant from the deposition of Dr. Manpreet Kaur, CW-4, it would be clear that Bawa Singh (since deceased) suffered the injuries while in police custody at Police Station Majitha Road.

Even though, it is the submission of the counsel appearing for the petitioner that petitioner is now in custody since 12.02.2016 and the purpose of summoning order is for him to join trial proceedings, yet this Court is not inclined to accept the prayer made in the present petition as regards grant of bail.

The allegations are serious in nature and in relation to custodial death of an under-trial. Such allegations are founded as per injuries indicated in the Post Mortem Report. As per counsel for the complainant, the injuries in themselves are reflective of torture of the extreme. While opposing the present petition, it has also been contended that the present petitioner was the S.H.O. In-charge of the Police Station concerned. Further

apprehension raised is that in the eventuality of the petitioner being granted benefit of bail, he by virtue of his authority and position in the police department would certainly attempt to intimidate and threaten the witnesses or other persons acquainted with the facts of the case and thereby dissuade them from disclosing the truth before the Court.

In the light of the contentions raised on behalf of the complainant and keeping in view the serious allegations and gravity of offence, prayer of the petitioner seeking benefit of bail is declined at this stage.

Petition is dismissed.

16.05.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**