

**In the High Court of Punjab and Haryana at Chandigarh**

**Crl. Misc. No. M-17813 of 2015**

**Date of Decision: 19.12.2016**

Sherkhan and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

Present: Mr. Ashwani Bhardwaj, Advocate  
for the petitioners.

Mr. Vikas Chopra, DAG, Haryana.

None for respondent No. 2.

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**ANITA CHAUDHRY, J(ORAL)**

The petitioners have assailed the order dated 13.5.2015 passed by the Additional Sessions Judge, Bhiwani who accepted the revision filed by the complainant and set aside the order passed by the Magistrate vide which bail was allowed to the petitioners under Section 167(2) Cr.P.C.

The issue for examination is short. The point involved is whether the petitioners are entitled to bail under Section 167(2) Cr.P.C. The trial Magistrate had held that since the challan had not been presented within 60 days, therefore, they were entitled to bail. Aggrieved by the order, the complainant approached the Sessions Court who in its detailed order held that the period for presentation of challan in the case would be 90 days as the petitioners had been booked in a case registered under Section 307 IPC and could be sentenced upto life and the investigating agency could complete the investigation in 90 days.

Counsel for the petitioner had urged with great eloquence that the Revisional Court did not consider the facts in the right perspective and the petitioners have not even been charged under Section 307 IPC. It was urged that the petitioners were arrested on 28.9.2014 and the challan was not presented even upto the 70<sup>th</sup> day and the Magistrate had rightly allowed bail under Section 167(2) Cr.P.C. It was urged that the complainant had named a number of persons and the police had found two persons innocent on the basis of their mobile tower location and the challan was not filed under Section 366 IPC. It was urged that the injury under Section 307 IPC was manufactured which was on the hand and was found to be simple. Counsel for the petitioners placed reliance upon '**Ram Karan @ Ram Varan versus State of Rajasthan 2009(1) RLW 886**', '**Som Nath and another versus State of Punjab 2011(3) R.C.R. (Criminal) 515**' and '**Keshav Dev and others versus The State of Rajasthan 2005 CriLJ 3306**'.

State counsel had submitted that the petitioners had committed an offence under Section 307 IPC which was exclusively triable by the Court of Sessions and they could be sentenced for a period of life and period for presenting the challan was 90 days.

It has not been disputed before me that though, challan was filed under Section 307 IPC but charge had not been framed. The injury which was said to have been caused under Section 307 IPC was on the hand and no fracture was found. Counsel for the petitioners had referred to X-ray report (Annexure P-4).

Section 307 IPC reads as under:-

**307. Attempt to murder.**—Whoever does any act with such

*intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned.*

***Attempts by life convicts.***—[When any person offending under this section is under sentence of [imprisonment for life], he may, if hurt is caused, be punished with death.]

A reading of the above would show that the accused can be sentenced to a punishment which may extend to ten years and shall also be liable to fine. It is not disputed that no injury was declared dangerous to life and even charge under Section 307 IPC was not framed. Therefore, the Revisional Court fell in error and had wrongly set aside the order of the Chief Judicial Magistrate without considering the material, MLR and the nature of injury which could be easily seen at the time of disposing of the application. Simply because the section had been mentioned in the FIR it would not mean that the injury fell under Section 307 IPC. The Courts are expected to examine the material which is available with the police. The order dated 13.5.2015 passed by the Revisional Court is set aside. The order dated 6.12.2014 passed by the Magistrate is restored.

The petition is allowed.

**(ANITA CHAUDHRY)  
JUDGE**

**December 19, 2016**  
Gurpreet

**Whether speaking/reasoned** : **Yes**  
**Whether reportable** : **No**