

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

CRM-M-2178-2016
Date of decision: 08.02.2016

Nitish Kumar Petitioner

VERSUS

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Ms. Jigyasa Tanwar, Advocate,
for the petitioner.

Ms. Simsi Dhir Malhotra, DAG, Punjab.

M.M.S. BEDI, J.(Oral)

Petitioner has been in custody w.e.f. 11.01.2014. A period of two years has elapsed.

With the assistance of counsel for the petitioner and State counsel, I have gone through the allegations against the petitioner. The case was registered against the petitioner on the statement of Dharam Dev alleging that the petitioner along with one Balram and 4/5 others trespassed in the house of the complainant, armed with Dah, bat and sticks. Complainant and his grandson Arvind were attacked. The complainant was also pushed from the roof. Dharam Dev died after 26 days while undergoing a surgery.

Counsel for the complainant has intervened to contend that complainant Dharamdev, who has now died, remained hospitalized for a long period. He died on account of septicemia. The petitioner has been attributed a dah blow on the neck of the complainant.

On asking of the Court, State counsel informs that five material witnesses, out of 26 cited witnesses, have already been examined.

I have heard counsel for the petitioner and gone through the police record. I have also considered the status of the trial that only five witnesses, out of 26 have been examined whereas the petitioner has been in custody for a long period from January 2014. No opinion regarding the culpability of the petitioner, on appreciation of the evidence, can be expressed at this stage lest it should prejudice the prosecution case qua the petitioner or the other co-accused. It will also not be appropriate at this stage to consider the effect of dah blow attributed to the petitioner on the neck of the complainant and the connection of that injury with death as the post-mortem report mentions the cause of death as septicemia.

Counsel for the petitioner has drawn my attention to the statement of the doctor recorded in the Court in support of her contention that there was no sign of traumatic injury so far as injury no.1 and 2 are concerned and injury no.2 having been opined not with a blow from dah, the petitioner should be granted the concession of bail as the medical evidence as contrary to the ocular version.

I have considered the said contention and I am of the opinion that niceties of the trial cannot be gone into, at this stage, to determine the effect of contradictions if any in ocular and medical evidence. As per allegations, tThe petitioner had not only given injury to the deceased but had also pushed the deceased from the

roof. It will not be appropriate for this Court at this stage to arrive at any conclusion regarding the culpability of the petitioner.

In view of the above, I deem it appropriate to dispose of this petition with a direction to the trial court to take into consideration the fact that the petitioner has been in custody for the last two years and make earnest endeavour to conclude the trial within six months from the next date of hearing. In case the trial is not concluded within six months after the next date of hearing, it will be open to the petitioner to approach this court again for grant of regular bail.

Disposed of with the above observations expecting that the trial would be concluded within the period as directed by this Court.

Nothing said in this order will prejudice the right of the petitioner at the time of trial or at the time of filing the second petition for bail.

(M.M.S.BEDI)
JUDGE

February 08, 2016
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