

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

**CRM-M No.46228 of 2016
Date of Decision: 21.02.2017**

Nishant Arora

.....Petitioner

Vs

State of Punjab

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. A.S. Manaise, Advocate
for the petitioner.

Mr. Shilesh Gupta, Addl. A.G., Punjab.

Mr. Vaishnav Gandhi, Advocate
for the complainant.

RAJ MOHAN SINGH, J.

[1]. Petitioner has prayed for grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.132 dated 23.10.2016, registered under Sections 307, 323, 498-A, 34 IPC at Police Station Division No.2, Pathankot Distt. Pathankot.

[2]. Initially the FIR was registered under Section 307, 323 34 IPC, the offence under Section 498-A IPC was added subsequently on the basis of opinion given by the Assistant Public Prosecutor.

[3]. Brief facts are that complainant Diksha Arora was

married to the petitioner on 06.06.2015 and a child was born out of the wedlock. Allegations have been made by the complainant against the petitioner that in the month of July 2016, when the complainant was pregnant, she was sent to her parental home by her in-laws for delivery of the child. On 05.08.2016, she was blessed with a daughter. In October, 2016 the complainant came to her matrimonial house along with her daughter, where the petitioner and his parents made remarks that they wanted a son instead of daughter.

[4]. The in-laws pressurised the complainant to give divorce as they wanted to perform the second marriage of the petitioner. On refusal by the complainant to give divorce on 23.10.2016 at about 10.00 a.m., petitioner allegedly started abusing the complainant and by taking an iron hammer from the Almirah and after making *lalkara*, gave a hammer blow on the head of the complainant with an intention to kill her. The hammer blow landed on the backside of the head of the complainant and blood started oozing out. Petitioner gave two more blows of hammer on the head of the complainant, which also hit on the backside of her head. Complainant raised alarm. Father-in-law of the complainant took her to Hospital. The complainant also alleged that the occurrence took place due to the instigation of her in-laws.

[5]. As per MLR of the complainant, following injuries were found:-

- “1) *Lacerated wounds 2 x 0.5 cm on centre of occipital region of skull. Adv. X-ray and surgical opinion.*
- 2) *Lacerated wound 3 x 0.5 cm on left side of occipital region of skull. Adv. Surgical opinion.*
- 3) *Lacerated wound 2.0 x 0.5 cm on left side of occipital region of skull 2.00 cm above the second wound. Adv. Surgical opinion.”*

[6]. The injured was medico-legally examined in the Civil Hospital, Pathankot, but thereafter she did not report to Surgeon for opinion. Wounds were got stitched from other Hospital. Doctor of the Civil Hospital, Pathankot opined that the injuries were not dangerous to life, but simple in nature. Since the wounds were got stitched from other Hospital, therefore, the Doctor could not give any comment on the same.

[7]. Learned counsel for the petitioner vehemently contended that the injuries were found to be simple in nature. Recovery of hammer was effected by the Police and the same was not sent to FSL for examination as the hammer had already been washed with water. The sketch of the hammer showed that from one side it was incised and from second side it was blunt. The injuries on the person of the complainant were shown

to be lacerated wounds. Receipt of injuries from blunt side of the weapon would be debatable in the context of intention of the accused to cause death of the complainant by inflicting such injuries on her head.

[8]. Learned counsel further contended that since the injuries were found to be simple in nature, Doctor did not give any opinion as the patient left the Civil Hospital and got the wounds stitched in other Hospital, therefore, in terms of Section 320 IPC (Eightly), any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits, would fall in the category of grievous hurt. *Prima facie*, in order to constitute offence under Section 307 IPC, the injury should be sufficient to cause death in ordinary course of nature.

[8]. Learned State counsel duly assisted by learned counsel for the complainant, opposed the petition on the ground that receipt of injuries on head would give rise to a *prima facie* commission of offence under Section 307 IPC as the accused intended to cause death by inflicting repeated blows with hammer on the head of the complainant.

[9]. At this stage, this Court cannot form any final opinion with regard to the intention and the nature of injuries whether the same were sufficient to cause death in ordinary course of

nature or not, but *prima facie* it can be observed that due to want of medical opinion, the grievous hurt in terms of Section 320 IPC (Eightly) would be on arguable note, for attracting an offence under Section 307 IPC.

[10]. At this juncture, keeping in view the material on record and without adverting to the merits of the case, I am of the view that petitioner can be given the benefit of regular bail.

[11]. In view of above, petition is allowed. Petitioner is ordered to be enlarged on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court.

[12]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

February 21, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No