

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision. No.2225 of 2016

Date of Decision: 24.08.2017

Dharamvir Singh

...Petitioner(s)

Versus

State of Punjab & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Prem Singh Bhangu, Advocate
for the petitioners.

Mr. Bhupender Beniwal, AAG, Punjab.

HARI PAL VERMA, J. (Oral)

Petitioner-complainant has filed the present revision petition against order dated 12.4.2016 passed by learned Additional Sessions Judge, Sangrur, whereby the application filed by him for releasing the amount of Rs.4,75,000/- has been dismissed.

Briefly stated, FIR No.98 dated 21.7.2014 under Sections 302/394/483/323 IPC Police Station Lehra was registered on the basis of complaint made by the petitioner. As per the FIR, on 21.7.2014, when the petitioner, who is an agriculturist by profession, was returning to his village on his motorcycle along with his father Mohinder Singh after withdrawing an amount of Rs.4,95,000/- from the bank, a car came from their back side, in which three persons were present. The accused struck their car with the

motorcycle of the complainant from back side. Resultantly, the petitioner and his father fell down and received injuries. In this process, two youths alighted from the car and one out of them put chilli powder in their eyes. They snatched the amount of Rs.4,95,000/- along with the copy of the bank account from them. Since the petitioner and his father had sustained injuries, they were admitted in Civil Hospital, Lehra. Mohinder Singh was medico-legally examined by PW-3 Dr. Vivneet Singh, who found following injuries on the person of Mohinder Singh:-

- “1. Diffuse swelling over right side of forehead. Advice Surgeon opinion.*
- 2. Reddish abrasion 3.2 cm over left side of forehead. Fresh bleeding was present. Diffuse swelling around the wound. Advice Surgeon opinion.*
- 3. Nasal bleeding present. Reddish abrasion 2.1 cm over the nose. Advice ENT Surgeon opinion.*
- 4. C/o pain right shoulder joint. No superficial mark of injury. Advise ORTHO and Surgeon.*
- 5. C/o pain right side of chest. No superficial mark of injury present. Advise ORTHO and Surgeon specialist opinion.*
- 6. C/o pain right elbow joint, Reddish abrasion 3.2 cm over it. Fresh bleeding present. Advise ORTHO opinion.”*

Thereafter, Mohinder Singh was admitted to Government Medical College and Hospital, Sector 32, Chandigarh. However, he died on 25.8.2014. PW-15 Dr. Sanjay, who conducted post-mortem examination of Mohinder Singh, gave his opinion that the cause of death was Septicemia. The trial in the case was conducted and the accused were convicted for different offences vide judgment dated 19.10.2015 and vide

separate order dated 20.10.2015, they were sentenced to undergo rigorous imprisonment for maximum period of five years along with fine.

Learned counsel for the petitioner has argued that in the aforesaid case, though the respondents-accused have been convicted and the amount which was snatched from the petitioner and his father has been recovered by the police, but the same was lying with the police, which now stands deposited in the bank. The petitioner being the owner of the amount in question, has legal right to get it released on *superdari*, for which, the petitioner is ready to comply with the conditions, which may be imposed in the peculiar facts and circumstances of the case. He has further argued that since the petitioner and his father had withdrew the amount from the bank, as loan, the petitioner is continuously paying the instalments as well as interest thereon, without availing the loan amount.

Learned counsel for the petitioner has relied upon judgment of Karnataka High Court in the case of **Abdul Shameed v. State 2017(2) AIR Kar R 532** to contend that the Court has power to release the seized amount by taking adequate surety, provided the applicant places on record some material to show that he is the lawful owner of the seized amount. Reliance has also been placed on a judgment of Madras High Court in the case of **Panneer Selvam v. The State of Tamil Nadu etc.** 2017(1) MLJ (Criminal) 42 and judgment of Madhya Pradesh High Court in the case of **Union of India & ors. v. State of Madhya Pradesh 2015(2) ANJ 334**. In the case of **Panneer Selvam v. The State of Tamil Nadu etc.** (supra), the Madras High Court while placing reliance on judgment of Hon'ble the Apex Court in the case of **Sunderbhai Ambalal Desai v. State of**

Gujarat, 2003 (1) CTC 175 held that the cash amount taken from the petitioner can be released to him.

Mr. Narinder Singh, Advocate has put in appearance on behalf of respondents no.2 to 4 and filed his power of attorney which is taken on record.

On the other hand, learned State counsel has not disputed the fact that an amount of Rs.4,75,000/- was recovered and the same is lying deposited in the bank. However, he submits that since appeals filed on behalf of the respondents-accused against the judgment of conviction and order of sentence are pending before this Court, the said amount cannot be disbursed to the petitioner, the same being a case property.

I have heard learned counsel for the parties.

Admittedly, an amount of Rs.4,75,000/- has been recovered by the police which is now lying deposited in the bank. The main ground on which the claim of the petitioner for release of the aforesaid amount has been declined by the Court below is that appeals filed by the respondents-accused against the judgment of conviction and order of sentence are pending before this Court, due to which, it is not appropriate to return the amount in question, as the same is a case property. However, when application was filed by the petitioner for release of the seized amount, learned Court below could have released the same, subject to fulfillment of certain conditions. Therefore, in order to meet the interest of the parties i.e. the prosecution as well as the accused, the best course available to the Court, in the given circumstances, is that let the money deposited with the bank be released to the petitioner, however, subject to his furnishing bank

guarantee, which would ultimately be governed by final decision in the appeals.

This Court finds support from judgments of different High Courts in the cases of **Abdul Shameed v. State** (*supra*), **Panneer Selvam v. The State of Tamil Nadu etc.** (*supra*) **Union of India & ors. v. State of Madhya Pradesh** (*supra*) and is of the opinion that the trial Court ought to have released the amount in question against adequate security. Therefore, in view of the law laid down by Hon'ble the Apex Court in the case of **Sunderbhai Ambalal Desai v. State of Gujarat** (*supra*), this Court finds that if the petitioner furnishes bank guarantee to the extent of the amount in question i.e. Rs.4,75,000/- with one surety, with an undertaking that he will not dispute the identity of the said amount, as recovered from him, the said amount be released in his favour.

Accordingly, the present revision is allowed. The impugned order dated 12.4.2016 is set aside and the amount in question i.e. Rs.4,75,000/- is ordered to be released to the petitioner, on *superdari*, to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Sangrur and subject to the condition that the petitioner shall furnish bank guarantee of the like amount sought to be released with one surety of the like amount.

August 24, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No