

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

CRM-M-16105-2018 (O&M)

Date of decision: 25.04.2018

Atul

... Petitioner

Vs.

State of U.T. Chandigarh

... Respondent

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

Present: Mr. J.S. Dadwal, Advocate for the petitioner.

Mr. Deepinder Brar, APP, U.T. Chandigarh.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

At the very outset, counsel for the petitioner prays that in view of the averments contained in para 7 of the instant petition filed under Section 439 Cr.P.C., the prayer of the petitioner seeking benefit of regular bail be considered for offences under Sections 147/148/332/353/304/506 IPC. Counsel submits that initially, FIR No.339, dated 17.11.2017 had been registered under Sections 147/148/332/353/302/506 IPC at Police Station Sector 11, Chandigarh but subsequently, after completion of investigation, challan has been presented under Sections 147/148/332/353/304/506 IPC.

Oral request made by counsel is accepted.

FIR came to be registered on the complaint of Arvind Yadav posted as S.D.O. in the Electricity Department, Chandigarh. Incident is stated to be of 17.11.2017 during the course of a special drive conducted by the officials of the Electricity Department to remove illegal electricity connections. Allegations are that at about 4:15 P.M. on 17.11.2017 when the team of officials reached at a particular house in Sector-25, Chandigarh, two boys i.e. the present petitioner and co-accused, Vikas confronted the

team of officials and attacked the complainant with an intention to kill and delivered slap and fist blows. One Sub Station Attendant, Harwinder Singh having come forward to rescue the complainant was also attacked. As per complainant, fist blows were given on the chest of Harwinder Singh on account of which he fell down and one of the assailants thereupon sat upon him and gave repeated fist blows. Sub Station Attendant, Harwinder Singh is stated to have died on the same very day.

Petitioner was arrested on 17.11.2017.

Counsel representing the petitioner adverts to the opinion recorded by a Board of Doctors as regards cause of death and which was in the following terms:

“The cause of death in our opinion chronic ischemic heart disease with pulmonary edema which is natural cause of death.”

Counsel has even referred to the document placed on record at Annexure P-3 i.e. a communication from the Investigating Officer, Police Station Sector-11, Chandigarh and addressed to the Board of Doctors, Government Hospital, Sector-16, Chandigarh, wherein a second/final opinion on the cause of death was sought. In response thereto, the following opinion was furnished:

“In the absence of any external injury on the body of deceased opinion regarding exaggeration of preexisting cardiac disease (chronic ischemic heart disease with pulmonary edema) due to fist blow/kicked to the deceased cannot be given. However, the above possibility of exaggeration of the preexisting cardiac disease due to altercation/heated arguments/trembling can not be ruled out.

Sd/

2.2.18

Sd/

2.2.18”

Apparently, it is on account of such opinion having been recorded that challan was presented by the Investigating Agency not for offence under Section 302 IPC but under Section 304 IPC.

During the course of arguments, learned counsel representing U.T. Chandigarh would concede that there were no external injury marks on the person of the deceased.

Counsel for the petitioner has even made an attempt to create a dent in the prosecution version by submitting that even though complainant/S.D.O. Arvind Yadav had alleged that he had been given repeated fist and slap blows with an intention to kill, yet his medical examination had not even been conducted. Even such assertion made by counsel has not met with any rebuttal.

Challan in the present case has been presented.

Trial is at the very initial stage and would take time to conclude.

In view of the facts and circumstances noticed herein above and coupled with the length of incarceration already suffered by the petitioner, he is held entitled to the benefit of bail.

Petitioner be enlarged on bail subject to satisfaction of trial Court/Duty Magistrate, concerned.

Disposed of.

25.04.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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|-----|----------------------------|--------|
| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |