

CRM-M No.21729 of 2018
CRM-M No.1775 of 2018
CRR No.810 of 2018

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

Sr.No.209

CRM-M No.21729 of 2018
Reserved on:05.09.2018
Pronounced on:10.09.2018

Raj Kumar @ Rajapetitioner

Versus

State of Punjabrespondent

CRM-M No.1775 of 2018

Rajnish Kumar @ Bobbypetitioner

Versus

State of Punjabrespondent

CRR No.810 of 2018

Pawan Kumar @ Pammapetitioner

Versus

State of Punjabrespondent

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Navkiran Singh, Advocate
for the petitioner in CRM-M-21729 of 2018

Mr.Veneet Sharma, Advocate
for the petitioner(s) in CRM-M-1775-2018 & CRR-810-2018

Ms.Jasneet Mehra, Advocate
for the complainant in CRM-M-21729 of 2018 &
CRR-810-2018

Mr.Sidakmeet Sandhu, AAG Punjab

ARVIND SINGH SANGWAN, J. :

This order shall dispose of three petitions i.e.CRM-M No.21729 of 2018, CRM-M-1775-2018 & CRR-810-2018, as these have emerged out of the same FIR No.125 dated 18.06.2017 under Sections 307/186/353/148/149 IPC (Section 302 IPC added later on), Sections 25 and 27 of Arms Act, registered at Police Station Cantonment, Amritsar City.

Prayer in CRM-M-21729-2018, filed by petitioner Raj Kumar @ Raja, is for grant of anticipatory bail in the aforesaid FIR. This is the second anticipatory bail petition. The first petition filed by the petitioner i.e. CRM-M-25994-2017, was dismissed vide order dated 16.01.2018 passed by this Court. The operative part of the order is reproduced as under:

“Brief facts of the case are that the complainant – Balbir Singh got the aforesaid FIR registered with the following allegations:-

“MHC. P.S. Cantonment. Today I ASI along with HC Harjit Singh 2233, in connection with patrolling and looking for bad elements were present at Balmik Chowk that an information was received that there is a fight going on at the Sarai Putlighar and reach at the spot quickly, on which I ASI along with colleagues reached near the Sarai of Sadhu Ram near Putlighar, where Karaj Singh son of Puran Singh, resident of village Boparai was affixing an iron gate on his shop and Sunil Kumar @ Sonu and Sanjiv Kumar sons of Prem Kumar, Bobby Juice Bar and Raj Kumar @ Raja resident of Sewa Nagar were stopping him from doing so on which I ASI stopped both parties from fighting and asked them to show the concerned documents regarding this property, on which Karaj Singh produced the documents regarding the ownership of the property before me and Sanjiv Kumar and Sunil Kumar did not produce any documents, but they kept arguing and I said that in case you have any stay order etc., stay order or any order of the Court, then show and I stopped the work, on which Raj Kumar @ Raja, Sanjiv Kumar and Sunil Kumar did not produce any document or order before me and called their other friends and Surinder Chaudhari and his son Pawan Kumar came with their other friends and started raising a

commotion and I ASI stopped them from doing so and since the situation was aggravating, the officer Incharge, Police Station was apprised regarding coming to the spot and the Head Munshi Police Station was asked to send more force. On which, PCR Motorcycle, Ertiga Vehicle and more force from the police station came to the spot and Surinder Chaudhari and his friends opened the adjoining shop of Bobby Juice Bar and brought empty bottles and brick bats from the street and started throwing them towards the labour and artisans and the police party and I ASI with the help of other colleagues tried to stop them and Surinder Chaudhari in loud voice said throw brick bats towards the police party so that they should run away from the spot. On this the son of Surinder Chaudhari i.e. Pawan Kumar gave a brick bat blow held in his hand directly towards Rajesh Kumar 13/ASR with an intention to kill him on his head and he suddenly fell down on the ground and they kept throwing bottles and brick bats and one of the accomplices of Surinder Chaudhari fired in the air, due to which there was confusion at the spot and Surinder Chaudhari and his son Pawan Kumar along with his friends ran away from the spot. I ASI with the help of colleagues took the injured Constable Rajesh Kumar on the Ertiga immediately to Parkash Hospital for treatment where the doctor said he was serious and referred him to Amandeep Hospital and Constable Rajesh Kumar is presently under treatment at Amandeep Hospital. In this manner, by fighting Surinder Chaudhari, Pawan Kumar, Raj Kumar @ Raja, Sunil Kumar, Sanjiv Kumar have obstructed the police on duty and have caused injury to a police employee with an intention to kill and have fought with the Karaj Singh party from which offences under Section 307, 353, 186, 148, 149 IPC and 25/27/54/59 of the Arms Act are made out and ruqqa is being sent through PHG Amarjit Singh 9722 to the Police Station. Case be registered and number be informed. The Officer Incharge, Police Station has reached wireless and special reports be issued and sent to the Illaqa Magistrate and Senior Officer. I am busy on the spot in investigation. Sd/-Balbir Singh P.S. Cantonment, dated 17.06.2017. Today in the area of Road. At 4.30 P.M.”

Initially, the FIR was registered under Sections 307, 186, 353, 148, 149 IPC and 25 and 27 of the Arms Act and while issuing notice of motion, the petitioners were granted interim bail.

Later on, the injured Constable Rajesh

Kumar died on 27.09.2017 and thereafter, Section 302 IPC was also added.

During the pendency of the petition, the report of the Histopathologist was submitted which reads as follows:-

“GROSS EXAMINATION: Weight of heart – 310 gms.
Left ventricular wall thickness – 1.3 cm.

MICROSCOPIC EXAMINATION:

Pieces from left myocardial wall: No remarkable pathology seen.

Pieces process from both coronaries: shows atherosclerotic change.

Pieces from Lungs: Do not float in water. Show featus of pneumonia.

Pieces from Liver: shows hemorrhagic areas and chronic inflammatory cells infiltrating the portal triad.

Pieces from Spleen: Shows hemorrhagic necrosis.

Pieces from Kidneys: Shows glomeruli, tubules and interstitial tissue infiltrated with chronic inflammatory cells at places.

Pieces from Brain: No remarkable pathology seen.”

Thereafter, the case was again adjourned to obtain the report of the Medical Board as to whether the cause of death given in the report of Histopathologist i.e. septicemia, was aggravated on account of the injuries sustained by the deceased – Constable Rajesh Kumar. The report of the Medical Board dated 23.08.2017 has been submitted and the same is reproduced as below:-

“This is to certify that Mr Rajesh Kumar S/o Sh. Madan Lal R/o VPO Chawinda Devi District Amritsar is admitted in this hospital on 10 Aug. 2017 as a diagnosed Septic Shock with Hypertension with allied history of Head Injury operated at Amandeep Hospital on 18 July 2017 for SDH (Craniotomy) done. He is unable to speak, unable to eat. Patient is on ryle tube feed. Neuro Surgeon advised Cranioplasty after 3 months. Patient is still admitted in ICU of The Corporate Hospital. Patients's condition is critical till date.”

Learned counsel for the petitioners has submitted that the petitioner namely Sourav Mahajan (in CRM-M No.41707 of 2017) was not named in the FIR and he was not attributed any injury, however, he was

implicated on the disclosure statement made by the co-accused. It is further submitted that the petitioner – Sourav Mahajan was arrested and was released on regular bail after about 1½ months and is sought to be arrested as Section 302 IPC has been added.

Learned counsel on behalf of the petitioner/accused namely Raj Kumar @ Raja (in CRM-M No.25994 of 2017) has submitted that there is no allegation against him in the FIR regarding causing an injury and as per the FIR one brick bat blow was given by son of the co-accused Surinder Kumar Chaudhary i.e. Pawan Kumar on the head of the deceased – Constable Rajesh Kumar which ultimately resulted into his death and Pawan Kumar was arrested and is in judicial custody. It is also submitted that challan against Pawan Kumar has already been submitted in the Court.

Learned counsel on behalf of the petitioner – Surinder Kumar Chaudhary (in CRM-M No.29061 of 2017) has submitted that the petitioner is an old man aged about 64 years and is a heart patient and he had also filed this petition before Section 302 IPC was added and as per the FIR, he is attributed lalkara and son of the petitioner i.e. Surinder Kumar Chaudhary's son, who is main accused namely Pawan Kumar stands arrested. It is further submitted that by way of two demand drafts of Rs.50,000/- (each), the petitioner – Surinder Kumar Chaudhary has given financial help to the victim who was an injured at that time as per the orders dated 11.09.2017 and 18.09.2017 and was admitted in hospital.

On the other hand, counsel for the State, on instructions from ASI Gurvinder Singh, and assisted by counsel for the complainant has opposed the prayer for bail on the ground that both the accused namely Raj Kumar @ Raja as well as Surinder Kumar Chaudhary

have been named in the FIR and specific role have been attributed to them. It is further submitted by counsel for the State that both the accused have dared to stop the police party which has gone at the spot for the purpose of preventing any fight between the two parties as one party was trying to affix an iron gate over the disputed property. Counsel for the State has further argued that on the asking of the petitioner – Raj Kumar @ Raja, co-accused – Surinder Kumar Chaudhary and his son came at the spot and started raising commotion with the ASI who was present at the spot and later on when the situation was aggravated by these two petitioners, he informed the SHO of the Police Station and called for additional force.

It is also argued by counsel for the State that there are direct allegations against both the petitioners namely Raj Kumar @ Raja and Surinder Kumar Chaudhary that they have brought empty bottles, bricks and bats and started throwing towards the labour and masons who were working at the spot as well as on the police party resulting in fatal injury to Constable Rajesh Kumar and thus, opposed the prayer for bail.

After hearing counsel for the parties, I find that as per the report submitted by the Medical Board, it cannot be said that the injured – Constable Rajesh Kumar, had fully recovered from the injury sustained by him at the hands of co-accused Pawan Kumar as he had prolonged and multiple hospitalization which led to his death. Therefore, at this stage, it cannot be said that the cause of death of Constable Rajesh Kumar i.e. septicemia was not due to aggravation of his prolonged and multiple hospitalization on account of sustaining the injuries. Therefore, I find no merit in the bail applications filed by the petitioners/accused – Raj Kumar @ Raja as well as Surinder Kumar Chaudhary (in CRM-M Nos.25994 and

29061 of 2017) against whom there are direct allegations which resulted in death of a police official and providing of some financial help to this official is not a ground to show any sympathy to them and, therefore, the same are accordingly dismissed.

However, a perusal of the FIR and other documents show that the petitioner – Sourav Mahajan (in CRM-M No.41707 of 2017) was neither present at the spot nor he was attributed any injury and he has been involved in the FIR later on, on the basis of the supplementary statement. It is also not disputed that he was arrested and was released on regular bail after about 1½ months, therefore, the anticipatory bail granted to the petitioner – Sourav Mahajan vide order dated 09.11.2017 (in CRM-M No.41707 of 2017) is made absolute.

Learned counsel for the petitioner submits that the only change of circumstances is that, now the trial Court has framed the charge under Section 304 IPC instead of Section 302 IPC. Therefore, in view of the changed circumstances, the petitioner is entitled to concession of anticipatory bail.

On merits, learned counsel for the petitioner reiterated the arguments which he had raised during the pendency of the aforesaid CRM-M- 25994-2017.

Prayer in CRM-M-1775-2018, filed by Rajnish Kumar @ Bobby, is for grant of regular bail in the aforesaid FIR.

Learned counsel for the petitioner submits that in the FIR, no specific injury or over act is attributed to the petitioner and the petitioner is in judicial custody since 26.09.2017. The challan has already been presented and the charges have been framed and the conclusion of trial will take some

time. Learned counsel for the petitioner submits that one of the co-accused of the petitioner i.e.Sourav Mahajan has been granted the concession of anticipatory bail vide order dated 16.01.2018 passed in CRM-M No.25994 of 2017. He further submits that as per the allegations in the FIR, the deceased has died on account of a brickbat blow given by the co-accused Pawan Kumar, which hit on the head of the deceased Rajesh Kumar. Learned counsel for the petitioner further argued that the petitioner is not involved in any other case and as per the prosecution version given by ASI Balbir Singh, the brothers of the petitioner namely Sanjiv Kumar and Sunil Kumar along with accused Raj Kumar @ Raja were restraining one Karaj Singh, from installation of a gate in his shop. Learned counsel further submitted that even the *lalkara* is attributed to co-accused Surinder Chaudhary and his son Pawan Kumar had given the brickbat blow on the head of Constable Rajesh Kumar.

Prayer in CRR-810-2018 filed by Pawan Kumar @ Pamma, is for setting aside the order dated 08.12.2017, vide which the application filed by the petitioner Pawan Kumar @ Pamma, for granting him default bail under the provisions of Section 167 (2) of the Code of Criminal Procedure (Cr.P.C), was dismissed.

Learned counsel for the petitioner has argued that the petitioner had moved an application on 07.12.2017 at 4.15 PM and on the same day, the report under Section 173 Cr.P.C. was submitted at 4.30 PM. Learned Counsel for the petitioner further submits that the petitioner, in fact, had surrendered before the Illaqa Magistrate on 08.09.2017 by moving an application, and, therefore, the challan was presented on 91st day and the

petitioner is entitled to be released on default bail as per the provisions of Section 167(2) Cr.P.C.

In reply, learned State counsel, on instructions from the Investigating Officer, assisted by learned counsel for the complainant, has however, opposed the prayer of the petitioner(s).

It is argued by learned State counsel that as per the allegations in the FIR, there are direct allegations against Raj Kumar @ Raja (petitioner in CRM-M-21729-2018), whose anticipatory bail application already stood dismissed vide order dated 16.01.2018 passed in CRM-M No.25994 of 2017. There are no change of circumstances and rather the petitioner Raj Kumar @ Raja has not surrendered before the trial Court and has filed the present application on the same grounds, which were duly considered while deciding the aforesaid petition.

It is further submitted by learned State counsel that the allegations against Rajnish Kumar @ Bobby (petitioner in CRM-M-1775 of 2018), are similar to the other accused persons, as he was also a part of unlawful assembly, which has caused injury to a police official i.e. Constable Rajesh Kumar. It is further submitted that the said Constable Rajesh Kumar received injuries at the hands of co-accused of the petitioner i.e. Pawan Kumar and later on he died. However, it is not disputed that the petitioner i.e. Rajnish Kumar @ Bobby is in custody since 26.09.2017 and is not involved in any other case. It is also not disputed that the charges have been framed and the evidence is yet to start.

Learned State counsel, in reply to the arguments raised by learned counsel for the petitioner Pawan Kumar @ Pamma (petitioner in

CRR-810-2018) has submitted that, in fact, on the day when the challan was presented before the Illaqa Magistrate i.e on 07.12.2017, it was the 90th day as per the provisions of Section 167(2) Cr.P.C. and the challan had been presented within the limitation prescribed under the Code of Criminal Procedure. It is further argued that the right of default bail as per the provisions of Section 167(2) Cr.P.C.would only arise in case the challan was presented after the expiry of 90 days period and in the instant case the challan was presented on 90th day, itself. Therefore, the petitioner is not entitled for default bail.

Learned counsel for the complainant has also reiterated the arguments raised by the counsel for the petitioner.

It is relevant to mention here that the complainant-Monika Bawa has also filed CRR No.1706 of 2018 praying for setting aside the order dated 19.04.2018, vide which the trial Court/Addl.Sessions Judge, Amritsar, has framed the charge under Section 304 IPC instead of Section 302 IPC. The said petition was ordered to be listed with these petitions and arguments in the said petition have also been heard and is being decided separately.

After hearing learned counsel for the parties, I find no ground to entertain the second anticipatory bail application filed by Raj Kumar @ Raja (petitioner in CRM-M No.21729 of 2018). The earlier application was decided on merits by passing a detailed order, considering all the arguments raised by the petitioner/accused as well as the prosecution, as noticed above, and considering the serious allegations levelled against the petitioner-Raj Kumar @ Raja and another accused i.e.Surinder Kumar Chaudhary, the said

application was dismissed. Mere fact that the trial Court has framed the charge under Section 304 IPC, vide order dated 19.04.2018, is not a ground to file fresh anticipatory bail application as the allegations against the petitioner remain same, especially, when the complainant has challenged the aforesaid order by filing a separate revision petition, and, therefore, I find no ground to grant anticipatory bail to Raj Kumar @ Raja (petitioner in CRM-M No.21729 of 2018), who is otherwise fleeing from the process of justice.

So far as the case of petitioner Pawan Kumar @ Pamma (petitioner in CRR-810 of 2018), is concerned, he is the main accused, who is attributed injury on Constable Rajesh Kumar, who was on duty being part of a police party, present at the spot to avoid any untoward incident. On a *lalkara* raised by Raj Kumar @ Raja, the petitioner had caused fatal injury on the head of the deceased Constable Rajesh Kumar with a brickbat. Even otherwise, the trial Court has rightly recorded a finding that the challan was presented on the 90th day, itself and therefore, the petitioner Pawan Kumar @ Pamma, is not entitled for default bail. I find no ground to interfere in the order dated 08.12.2017 passed by the Court below, dismissing the application of petitioner Pawan Kumar @ Pamma, filed under Section 167 (2) Cr.P.C.

Considering the fact that there are no direct allegations against the petitioner Rajnish Kumar @ Bobby (petitioner in CRM-M-1775 of 2018), except that he was present at the spot along with the co-accused, the brothers of the petitioner against whom there are allegations of stopping Karaj Singh from affixing the gate, the bone of contention between parties

which ultimately resulted into the police intervention and when the police was trying to control the situation, co-accused Pawan Kumar gave a brickbat blow on the forehead of the complainant Rajesh Kumar, who later on died. Therefore, prima facie, neither any untoward act is attributed to the petitioner Rajnish Kumar @ Bobby nor he is attributed any injury to the deceased person. Considering the fact that the petitioner is in judicial custody since 26.09.2017 and the evidence is yet to start, the petitioner Rajnish @ Bobby (petitioner in CRM-M-1775 of 2018), is directed to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of trial Court/Illaq Magistrate/Duty Magistrate.

The petitions stand disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

10.09.2018

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