

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

**CRM-M-37953-2018
Date of decision:12.10.2018**

Mukesh and others

....Petitioners

Versus

Kailash Chand and another

.....Respondents

CORAM : HON'BLE MR.JUSTICE GURVINDER SINGH GILL

Present: Mrs. Baljit Mann, Advocate
for the petitioners.

Mr. Sandeep Kumar Yadav, Advocate
for respondent No.1-complainant.

Mr. Ashok Singh Choudhary, Addl. A.G., Haryana
for respondent No.2.

GURVINDER SINGH GILL, J. (ORAL)

The petitioners seeks grant of anticipatory bail in respect of a criminal complaint No.COMI/13/2016 dated 17.02.2016 titled as Kailash Chand vs. Mukesh etc. for offences punishable under Sections 302/34 of Indian Penal Code, 1860, wherein they have been ordered to be summoned to face trial.

The complaint was filed by one Kailash Chand brother of deceased-Subhash wherein it has been alleged that on 06.08.2018 Mukesh and Nihal came to his house and took away his brother Subhash while saying that they are going to attend party on account of birth of nephew of Mukesh. Later the complainant came to know that Nihal, Mukesh son of

Hardwari, Mukesh son of Manshi Ram, Bhim Singh and some other persons along with his brother were having liquor on the roof of shop of Nihal Singh and that an altercation had taken between his brother and other persons, who pushed Subhash from the stairs of the shop of Nihal and consequently he sustained grievous injuries and ultimately succumbed to his injuries.

Learned counsel for the petitioner has submitted that in fact a DDR had also been lodged on the next day of occurrence which was duly inquired into but it was found that the deceased had slipped from the stairs and had not been pushed down by anybody. Learned counsel has further been submitted that it was after several days that the present complaint has been filed simply to extort money from the petitioners.

On the other hand learned counsel for the complainant has submitted that the delay whatsoever in filing the complaint is well explained from the fact that shortly after the DDR was filed, he made a complaint to Superintendent of Police, Mahendergarh on 24.09.2015 and when the Superintendent of Police, Mahendergarh did not take any action, he was constrained to file the present complaint. Learned counsel has also drawn attention of this Court to a copy of postmortem report wherein deceased was found to be having a bone deep injury measuring 20x3 centimeters on his scalp and that the said injury is clearly suggestive of the fact that the deceased having been pushed from the roof top of the said shop. It has thus been prayed that no case is made out for grant of interim bail to the petitioners.

Having considered rival submissions addressed before this

Court, I find that it would certainly be debatable as to whether present is a case of an accidental fall from the stairs of shop or the deceased was intentionally pushed from the roof top. In any case, the present case having been instituted on a private complaint, the petitioner would not be required for any custodial interrogation. Accordingly the petition is accepted and the interim directions issued vide order dated 31.08.2018 by this Court are hereby made absolute subject to the condition that the petitioners would regularly appear before the learned trial Court and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

The petition is accepted in the above mentioned terms.

(GURVINDER SINGH GILL)
JUDGE

12.10.2018
Gaurav Sorot

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No