

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

**Criminal Misc. No. M-39513 of 2018
Date of decision: 11.09.2018**

Rajinder Singh and another

..Petitioners

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Ms. G.K. Turka, Advocate
for the petitioners.

Daya Chaudhary, J.

Petitioners, namely, Rajinder Singh and Gaurav, have approached this Court by way of filing the present petition under Section 438 Cr.P.C. for grant of anticipatory bail to them in case FIR No.0151 dated 01.07.2018 registered under Sections 304, 323, 148 and 149 of Indian Penal Code at Police Station Civil Lines, Patiala.

Learned counsel for the petitioners submits that the petitioners have falsely been implicated in the case whereas they were not involved. The post-mortem of the body of the deceased was conducted. In the post mortem report, it has been mentioned that the deceased died due to septicemia due to the negligence of the deceased or his family members. As per allegations levelled in the FIR, no role has been attributed to the petitioners. There is no allegation in the FIR that the deceased got any injury with any weapon. At the most, offence under Section 323 IPC is made out, which is bailable and no offence under Section 304 IPC is made out. At the end, learned counsel for the petitioners submits that there was delay of one month in lodging of the FIR and even DDR was lodged next

day after the alleged incident.

Heard arguments of learned counsel for the petitioners and have also perused the contents of the FIR and other documents available on the file.

On perusal of contents of the FIR, it is apparent that the deceased died due to multiple injuries suffered by him. There is specific allegation that a number of injuries were caused on stomach, belly and left arm of the deceased-Sapinder. There were internal injuries also and he was got admitted in the Rajindera Hospital, Patiala on 06.06.2018 for treatment. The statement of injured-Sapinder was also recorded on 06.06.2018 and action was initiated. On 19.06.2018, he was discharged from hospital but thereafter, pain increased due to the injuries suffered by him. Again he was admitted in the hospital on 30.06.2018 and died in the hospital. It cannot be said that negligence was there on the part of the deceased or his family members or the doctor. The death has occurred due to injuries suffered by the deceased. It cannot be said at this stage that it is not a case under Section 304 IPC. It is a matter of evidence to be tested by the trial Court during trial on the basis of evidence produced by both the sides.

Explanation of Section 299 IPC provides that when death is caused by bodily injury, the person who causes such bodily injury, is deemed to have caused death. Although by resorting to proper remedies and treatment, the death could have been prevented.

Serious allegations are there against the petitioners and in case, they are released on bail at this stage, they may try to influence the witnesses. Moreover, the anticipatory bail or regular bail cannot be granted as a matter of rule. Certain parameters are necessary to be considered while

considering application for anticipatory bail as laid down in ***Siddharam***

Satlingappa Mhetre vs. State of Maharashtra, 2011 (1) RCR (Criminal)

126 in para (iv), which read as under: -

“(iv) There is no justification for reading into Section 438 Cr.P.C. the limitations mentioned in Section 437 Cr.P.C. The plentitude of Section 438 must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 Cr.P.C. to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the Court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.”

No doubt, bail is to be granted by exercising discretionary power of the Court but it is to be exercised by applying the judicious mind and not as a matter of course. The nature and gravity of the offence is also one of the factors to be borne in mind while considering the petition for grant of anticipatory bail.

Accordingly, I find no merit in the case and the petition being devoid of any merit is, hereby, dismissed.

11.09.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes