

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-4679-2018

Date of Decision: 14.3.2018

Kala Chand

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

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

Mr. Karanbir Singh, AAG, Punjab.

Mr. Naveen Sharma, Advocate,
for the complainant.

RAJ SHEKHAR ATTRI, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure (for short, "Cr.P.C.") for grant of regular bail to the petitioner in case FIR No.168 dated 15.9.2015 registered for the offences punishable under Sections 323, 341, 506, 148, 149 of Indian Penal Code (for short, "IPC") (307 IPC added later on) at Police Station Division No.4, Ludhiana.

Briefly stated it is the case of the prosecution that the petitioner along with his associates caused injuries to the complainant with the weapons in their respective hands. It is specifically mentioned in the FIR that the petitioner gave a blow with sharp edged weapon on the head of the complainant which hit on the forehead and the complainant fell down. Thereafter, his associates also inflicted more injuries. The medical report transpires that the petitioner was taken to Dayanand Medical College &

Hospital, Ludhiana and on his medical examination, the following injuries were found: -

1. 4 x 2 lacerated wound on forehead 1 cm deep.
2. Abrasion on left elbow.
3. Abrasion on left Iliac region.
4. Abrasion on right great toe
5. Abrasion on left Index finger

The injuries were subjected to surgical operation. The doctor opined that injury No.1 was a comminuted fracture on the frontal bone and was declared dangerous to life.

However, Station House Officer delve into the unnecessary saving the petitioner in the garb of conducting enquiry and he reported as under : -

“Conclusion of report ; - As per enquiry secretly and factually conducted by S.I.Sukhbir Singh 20/JR, SHO, Police Station Division No.4, Ludhiana on the basis of the statements of the persons who were present at the time of occurrence, it has come to notice that on 14.09.2015, the husband of the applicant Kala Chand was present in his house. The persons who were present at the time of occurrence disclosed that at about 5:00/5:15 PM Kali and Amit came with chilly packets in their hands along with murderous weapon and started beating to Kundan Lal who was already standing outside. To save himself Kundan Lal entered in the house of Kala Chand. On this they along with their other companion Shoki, Hira Lal, Deepu Sangar, Sonu Gwala and 2-3 other unidentified persons who

were armed with murderous weapons entered in the house of Kala Chand. After entering in the house of Kala Chand started beating to Kundan Lal. Kala Chand when intervened to save Kundan Lal, he was also beaten and caused injuries and he was bled. On seeing the gathering of inhabitants of locality they fled from the place of occurrence. The complainant of the case has pointed out about injury on the head by sharp edge weapon by Kala Chand. But as per Medical report the injury on the head of Amit Kumar is stated to be caused by blunt weapon. On that basis the challan under Section 308 IPC has been presented in the Court. On the basis of report of S.I.Sukhbir Singh 20/JR SHO Division No.4, Ludhiana Kala chand son of Sunder Bhagat resident of House No.1679 Street No.6, New Chander Nagar Ludhiana found to be innocent on the basis of statements of the persons who were present at the time of occurrence and keeping in view the medical report. Report is submitted for appropriate orders. Sd/- SHO, Police Station Division No.4, Ludhiana 30.5.17.

On this report the Assistant Commissiner North Ludhiana has made the following report : - “Submitted that I agree to the report submitted by SHO Police Station, divisin No.4, Ludhiana. Submitted for appropriate orders.”

Surprisingly, Assistant Commissioner of Police (North), Ludhiana also agreed with the report submitted by Station House Officer and both of them exonerated the petitioner. Subsequently, Special Investigation Team (SIT) was constituted and the role of the petitioner was

highlighted.

I have heard learned counsel for the parties and have given thoughtful consideration to the rival contentions.

Keeping in view the seriousness of injury attributed to the petitioner, this Court is of the considered opinion that the petitioner is not entitled to the concession of regular bail. Thus, the present petition is devoid of merit and is dismissed.

However, it has come to my notice that Station House Officer and Assistant Commissioner of Police (North), Ludhiana tried to unnecessarily and unauthorisedly save the petitioner by declaring him innocent. The investigating agency ought not to have evaluate and critically examine the material at this stage. It has to collect the evidence and submit report before the judicial authority. It is the job of Magistrate or Judge to evaluate the evidence.

To the mind of this Court, Station House Officer who submitted his report on 13.3.2017 and 30.5.2017 had clearly misused his powers and jurisdiction by declaring the petitioner as innocent. Similarly, Assistant Commissioner of Police (North), Ludhiana failed to apply his mind and agreed with the report of the Station House Officer for the reasons best known to him. Therefore, it is essential that appropriate action be taken against them in accordance with law by State of Punjab within a period of 3 months from the date of receipt of a certified copy of this order.

March 14, 2018

Paritosh Kumar

**(RAJ SHEKHAR ATTRI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No