

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

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**CRM-M-46013-2017
Date of Decision: 08.03.2018**

Gurbir Singh @ Gora @ Gural Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE SUDHIR MITTAL.

Present:- Mr.Kawaljit Singh, Sr. Advocate with
Mr. Partesh Bir Singh Sidhu, Advocate,
for the petitioner.

Mr. K.S. Sidhu, DAG, Punjab.

Mr. B.S. Bhalla, Advocate,
for the complainant.

SUDHIR MITTAL, J. (Oral)

The petitioner seeks regular bail in case FIR no. 43 dated 26.04.2017, registered under Sections 302/34 IPC, at Police Station Chattiwind, District Amritsar.

2 As per the case of the prosecution, the deceased was assaulted on 25.04.2017 by the petitioner amongst others who allegedly gave kick blows on the private parts of the deceased. The reason of discord mentioned in the FIR is stated to be political affiliation.

3 It is contented by learned Senior counsel appearing for the petitioner that the deceased was taken to Guru Nanak Mission Hospital on 25.04.2017 and a certificate in this regard has been issued by the said hospital in which it is recorded that the deceased was admitted due to acute MI Chest

pain with hypertension. There is no mention of any assault by the petitioner or his companion. The certificate further reveals that the deceased was shifted to Holly Heart Hospital at 8.30 PM and as per the post mortem examination report (Annexure P-3), the deceased was brought dead at Holly Heart Hospital. Thus, the submission is that had there been any incident of assault, as alleged in the FIR, some reference thereof would have been given in the certificate (Annexure P-2) and FIR would have been registered thereupon. In the instant case the FIR is registered at 7.15 PM on 26.04.2017 after the postmortem examination. Reference has also been made to the statement of PW-2 Dr. Maninder Singh to state that kick blows on the genital is not injury to the liver and that the liver injury which is the cause of death, cannot be attributed to the petitioner. Reference has also been made to the statement of PW-3 Surjit Singh (the person who took the deceased to the hospital at the first instance) to state that the petitioner was not present at the time of the incident.

4 In sum and substance, the case presented by the learned Senior counsel is that the deceased died due to pre existing medical condition and that the petitioner has been falsely implicated on account of political rivalry. The submission further is that investigation is complete, challan had already been presented and trial is in progress. The concerned Medical Officer as well as the complainant have also been examined. At this stage, the involvement of the petitioner in the crime is doubtful and therefore, no useful purpose would be served by keeping him in custody indefinitely.

5 On the other hand, learned State counsel has submitted that although the petitioner was declared innocent during the first inquiry, conducted by the SP Investigation, a subsequent inquiry conducted by the SP (D) Investigation has indicted the petitioner. It is further submitted that

allegation of kick blows on the private parts need not be confined only to the private parts. When a person is kicking an another person those kicks may land on the abdomen as well and it is evident from the medical evidence on record that the death was caused due to injury to the liver. Reference has further been made to the statement of PW-1 Jatinder Singh (complainant), wherein it is recorded that the petitioner gave kick blows not only in the private parts, but also to the stomach.

6 With reference to the statement of PW3- Surjit Singh, it is submitted that the said witness is not reliable because in his examination-in-chief he has supported the prosecution case whereas in his cross-examination he has turned hostile.

7 Learned counsel appearing for the complainant, reiterates the arguments of learned State counsel.

8 It is not in dispute that the petitioner was arrested on 26.04.2017. It is also in dispute that the death was caused on account of injuries to the liver and that kick blows to the genital area may have traveled to the stomach as well. However, in the certificate (Annexure P-2), no incident of assault is recorded. As per the declaration made in the said certificate, the deceased was shifted to Holly Heart Hospital at 8.30 PM on 25.04.2017 and the record also shows that he was brought dead to the said hospital. Yet, the FIR was registered at 7.15 PM on 26.04.2017. Even after the postmortem examination had taken place. This creates doubt in my mind. In any case, the trial is going on and the Medical Officer as well as the complainant have already been examined. Whether the petitioner is guilty or not will finally be determined after the trial. At this stage, no useful purpose will be served by keeping him in custody indefinitely.

9 The petition is allowed and he is ordered to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court concerned.

10 The observations made hereinabove shall have no effect on merits of the case.

(SUDHIR MITTAL)
JUDGE

March 08, 2018
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>