

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-36063-2019 (O&M)
Date of decision: 30.10.2019

Ishwar Singh

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Saurabh Sharma, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

CRM-26023-2019

For the reasons stated in the application, same is allowed and exemption sought is granted.

CRM stands disposed of.

CRM-32210-2019

For the reasons stated in the application, same is allowed and deposition of PW15 Dr. Kunal Khanna dated 09.01.2019 and MLR of Dalbir (since deceased) are taken on record as Annexure P-5 and P-6 respectively.

CRM stands disposed of.

CRM-M-36063-2019

Prayer in this 3rd petition is for grant of regular bail in FIR No.106 dated 03.05.2016 under Sections 148, 149, 302, 323 IPC read with Section 120-

B IPC, registered at Police Station Uchana, District Jind.

Learned counsel for the petitioner submits that present petition has been filed in view of certain new facts, as now statement of PW15 Dr. Kunal Khanna, who conducted the post-mortem, stands recorded and there are certain variations in the MLR and the post-mortem report.

Learned counsel for the petitioner further submits that as per allegations in the FIR, registered at the instance of Satbir Singh, who appeared as PW1, it is stated that there was a land dispute between the complainant party and the accused party. On 03.05.2016, complainant/PW1 Satbir Singh along with his father Lakhi Ram, wife Guddi and uncle Dalbir and certain other persons were working on their plot, when petitioner Ishwar Singh armed with a lathi along with other accused came at the spot.

The deposition of complainant/PW1 Satbir Singh made in the Court reads as under: -

“... Ishwar raised a lalkara that take on all the enemies and no one would be spared. After hearing the lalkara, Naveraj and Ananad caught hold my uncle Dalbir Singh and Ishwar assaulted my uncle with intention to kill him with his lathi. The blow of said lathi fall on the head of my uncle Dalbir Singh. Further, Anoop assaulted on the temple of my uncle Dalbir with his iron rod. My uncle fell unconsciously on the ground. Satpal and others also assaulted Satish, Vikram and my wife Guddi with their respective weapons. When we raised the alarm, Save Save then several persons came to the spot from surrounding area...”

Learned counsel for the petitioner has argued that as per deposition

of the complainant, co-accused Anoop assaulted on the temple of deceased Dalbir with an iron rod and petitioner Ishwar Singh gave a lathi blow on his head. It is further submitted that as per the MLR dated 03.05.2016 of deceased Dalbir Singh, it is stated that complain of pain in head with no external injury. It is also argued that later on, when the post-mortem was conducted by PW15 Dr. Kunal Khanna, Assistant Professor, Department of Forensic Medicine, Kalpana Chawla Govt. Medical College, Karnal, four injuries were noticed and the same read as under: -

“C) That the following injuries were noticed over the body during examination:

1) A reddish contusion of size 15 x 12 cm was present over the left side of parieto-temporo-occipital region of scalp. On dissection the underlying scalp tissues were ecchymosed. On further dissection a depressed comminuted fracture with multiple fractured radiations was present over an area of 8 x 5 cm over left side of skull bone at parieto-temporo-occipital region and it was extending to right occipital skull bone. The fractured ends showed blood infiltration of bony trabeculae. After opening of the skull vault diffuse subdural hemorrhage was present over left parieto-temporo-occipital region of brain. On further dissection diffuse subarachnoid hemorrhage was present over bilateral parieto-temporo-occipital regions of brain.

2) A reddish contusion of size 8 x 4 cm was present over lateral aspect of right arm and it was situated 13 cm below tip of right shoulder. On dissection the underlying soft tissues were

ecchymosed.

3) A reddish contusion of size 2 x 2 cm was present over right flank and it was situated 10 cm above right anterior superior iliac spine. On dissection the underlying soft tissues were ecchymosed.

4) A reddish contusion of size 3 x 2 cm was present over lateral aspect of right knee. On dissection the underlying soft tissues were ecchymosed.”

Learned counsel for the petitioner has further argued that though injuries No.2 to 4, which are reddish contusion, were not noticed in the MLR, however, these were found in the post-mortem report. It is further submitted that as per post-mortem report and statement of PW15 Dr. Kunal Khanna, a reddish contusion of size 15 x 12 cm was present over the left side of parieto-temporo-occipital region of scalp and this injury is attributed to co-accused Anoop. It is next submitted that as per version of complainant PW1, the petitioner as well as co-accused Anoop, both gave injuries with their respective weapons on the head of deceased Dalbir Singh, whereas in the post-mortem report, only 01 injury is found on the left parieto-temporo-occipital region of scalp.

Learned counsel for the petitioner has further submitted that co-accused Anoop has already been granted the concession of regular bail by the trial Court vide order dated 18.08.2018. It is also submitted that the petitioner is in custody for the last more than 03 years, 04 months and 23 days; he had been granted the concession of interim bail 03 times; he had never misused the same and had surrendered back in time. It is next submitted that though the petitioner is in custody for the last about 03 years and 05 months, but the trial is not

concluded, as the police has submitted the supplementary challan against co-accused Dusherra and the case is now fixed for 10.12.2019 for recording the evidence, which would amount to de-novo trial.

Learned State counsel, on instructions from HC Rajinder Kumar, has not disputed the factual position and submitted that statements of some of the prosecution witnesses are yet to be recorded.

Without commenting anything on merits of the case, considering the fact that the petitioner is aged about 60 years; he is in custody for the last more than 03 years and about 05 months; trial is delayed on account of submission of supplementary challan against co-accused Anoop and also in view of the fact that the petitioner has availed interim bail on three occasions and he has not misused the same as well as considering the statement of PW15 Dr. Kunal Khanna, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bond to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

30.10.2019

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No