

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-43717 of 2019
Date of Decision: 18.12.2019

Gurdeep Singh

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Prince Goyal, Advocate
for Mr. Munish Bansal, Advocate
for the petitioner.

Mr. Amitoj Singh Dhaliwal, DAG, Punjab.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 107 dated 24.10.2017 registered for the offence punishable under Section 304 of Indian Penal Code (for short, "IPC") at Police Station GRP Bathinda, District Bathinda. (Offence punishable under Section 27 of the Arms Act was added later on and Charge was framed under Section 302 IPC).

Heard.

As per case of prosecution, complainant on reaching home at 11.00 a.m. on 23.10.2017, was informed by his wife that a dispute was going on at the railway line and their son Pardeep Singh and nephew Harjinder Singh had also gone towards that side. Complainant immediately rushed towards railway line leading towards Railway Station Katar Singh Wala, where he found his son and nephew standing in between the railway line. At a distance of about ten steps from them 15/20 boys were arguing with security guards. Complainant called his son and nephew, who came

towards him. In the meanwhile, those 15/20 boys started throwing stones towards security guards. Due to hitting of stones, security guards fired in the air, at which, boys again pelted stones towards them. In the meanwhile, a fire shot hit son of the complainant, who fell down and the boys who were pelting stones ran away towards the fields. Complainant reached the spot and found that his son was bleeding from left eye and other parts of the body. He picked up his son and took him to MAX Hospital, Bathinda, where he died on 24.10.2017.

Learned counsel for the petitioner has argued that the petitioner was arrested on 26.10.2017. The police after investigation has presented the challan under Section 304 IPC. It is a case where petitioner and other security guards were attacked by a mob and they had fired in self defence. Though, the trial Court has framed the charge under Section 302 IPC but there is no evidence that the petitioner had *mens rea* to murder son of the complainant.

Learned State counsel submits that the police after completion of investigation has presented the challan under Section 304 IPC but the trial Court framed the charge against the petitioner for offence punishable under Section 302 IPC. The police has collected the evidence to the effect that son of the complainant died due to bullet injury fired from the gun of petitioner.

The petitioner is in custody for the last more than two years. It will be an arguable point before the trial Court as to whether offence under Section 302 IPC or Section 304 IPC is made out. As per version in the FIR, the occurrence had taken place as some boys had pelted stones towards security guards of Bharat Petroleum.

Without expressing any opinion on merits of the case and keeping in view the period of incarceration of petitioner; the fact that prosecution has not been able to conclude its evidence so far and conclusion of trial will take considerably long time, the present petition is allowed. Petitioner-Gurdeep Singh is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate, subject to following terms:-

- (a) The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- (b) In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- (c) He shall not leave the country without the previous permission of the Court.

December 18, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No