

CRM-M No. 17387 of 2020
CRM-M No. 23200 of 2020

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202 (2 cases)

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

CRM-M No. 17387 of 2020
Date of Decision: 28.08.2020

Sandeep @ Dipi

-Petitioners

Versus

State of Haryana

-Respondent

CRM-M No. 23200 of 2020

Satish @ Tau and others

-Petitioners

Versus

State of Haryana

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. D.P.S. Bajwa, Advocate,
for the petitioner(s).

Mr. Rajat Gautam, D.A.G., Haryana.

RAJ MOHAN SINGH, J. (Oral)

The case has been taken up for hearing through
video-conferencing.

Vide this common order, CRM-M No. 17387 of 2020
titled 'Sandeep @ Dipi vs State of Haryana' and CRM-M
No.23200 of 2020 titled 'Satish @ Tau and others vs State of
Haryana' are being decided.

Since, both the petitions have arisen from one FIR, therefore, common facts are being noticed.

Petitioner(s) seek grant of regular bail under Section 439 Cr.P.C. in case bearing FIR No.32 dated 27.02.2020 registered under Sections 147, 148, 149, 296, 304, 323, 341, 427, 506 IPC and under Section 3(2) (v) of SC/ST Act (Section 304 IPC was added later on instead of Section 302 IPC) at Police Station Garhi, District Jind.

FIR was registered by the complainant namely Rajinder son of Risala. On 27.02.2020, the police received a doctori ruqa through telephone from Agroha Medical that Dharminder son of Risala due to the injury has been referred to Civil Hospital, Tohana to Agroha Medical. The police could not implement the same due to paucity of time. On 27.02.2020, in the morning, at about 9.20 AM, an intimation was received from Control Room, Jind that the injured was referred to Bharat Hospital, Hisar. On receiving the information, ASI along with Head Constable and Constable reached at Civil Hospital, Tohana. Doctori ruqa was collected and thereafter, they reached at Bharat Hospital, Hisar. As per opinion of the doctor, the injured was found to be unfit. Brother of the injured i.e. the complainant was found present. His statement was recorded to the effect that on 26.02.2020, the complainant along with his

family members, relatives and friends went to Shivaiya Pitar Bhandara in village Kalwan in their vehicles. The complainant went on his motorcycle. Uncle of the complainant was working as Priest for the last 15/20 years in the Shivaiya Pitar Bhandara. At about 11.30 PM, all the worshippers including the complainant were taking parshad while sitting in a vacant land in front of Shivaiya Pitar Bhandara. Some persons were singing and dancing to the tune of Disco Jockey. In the meanwhile, 15-20 unknown persons came duly armed with dandas, bindas, gandasi, bricks and exhorted that the complainant party be taught a lesson for playing DJ. All the unknown persons started causing injuries with their weapons. About 5-7 persons surrounded the brother of the complainant and started beating him with lathi and other weapons. Brother of the complainant got injuries on head, ear and other parts of the body. The assailants also inflicted injuries to the sister of the complainant, Subhash, Rajesh, Sachin and Babli. They also gave injuries to the womenfolk. Vehicles of the complainant party were also damaged. The complainant asserted that he can identify the assailants if they are produced before him. Dharminder became unconscious and fell on the ground. The complainant and his nephew started taking Dharminder to Civil Hospital, Tohana for treatment on a motorcycle. Even at that time, the assailants

stopped them on the way and threatened them. They also inflicted 2-3 dandas at the back of Satyawan. Thereafter, the complainant and his nephew Satyawan took Dharminder to Civil Hospital. After giving first-aid, the injured was referred to Agroha Hospital from where he was referred to Bharat Hospital, Hisar where he was admitted. The complainant alleged that about 15-20 persons caused injuries to Dharminder and other persons and also damaged their vehicle.

Case under Sections 323, 341, 147, 148, 506, 296 and 427 IPC was registered at the first instance. The injured was subjected to MLR.

As per histopathology report, Dharminder died on 01.03.2020. Thereafter, offence under Section 302 IPC was added. Inquest proceedings were conducted. Complainant side gave names of assailants as Jasbir @ Jassa, Satish @ Karmu, Satish @ Khali, Anil @ Dofa, Jaibir and Pardeep @ Deepu to be the persons involved in the incident. In the histopathology report issued by the Department, it was opined that possibility of death by shock and haemorrhage and resistentant cardiac injury caused by multiple injuries cannot be ruled out. The opinion of the doctor dated 19.05.2020 was to the effect that possibility of death by shock and haemorrhage cannot be ruled out due to fall on hard surface.

On 02.03.2020, accused Satish @ Karmu, Jasbir @ Jassa, Vikash and the petitioner were identified by the complainant party to be the assailants. Further investigation was conducted by Deputy Superintendent of Police, Narwana. Accused Rohtash, Satish @ Khali were arrested and recoveries of weapons were also made.

During further investigation of the case, Pardeep @ Deepu, Anil @ Dofa, Sandeep @ Caff, Anil, Jaibir, Rajesh, Azad, Raman and Manoj were found to be innocent. Death of Dharminder was found to be non-intentional and on that account, offence under Section 302 IPC was converted into Section 304 IPC.

Learned counsel for the petitioner contends that since the petitioner was not named in the FIR, nor he was named in the proceedings under Section 174 Cr.P.C. He was named only on 02.03.2020 by the complainant party on the basis of alleged identification. No test identification parade was conducted under Section 54-A Cr.P.C. which prescribes that where a person is arrested for a charge of committing offence and his identification by any other person is considered necessary for the purpose of investigation, then the Court having jurisdiction may on the request of the officer Incharge of the Police Station direct the person so arrested subject to

himself for identification by any person in the manner as the Court deems fit. The alleged identification of the petitioner by the complainant party is not in consonance with the requirement of law as prescribed under Section 54-A Cr.P.C.

Petitioner Sandeep @ Dipi is in custody since 03.03.2020.

Challan has been presented, but charges have not been framed so far.

Per contra, learned State counsel states that as per police record, petitioner is not involved in any other case, but keeping in view the gravity of offence, he may not be granted bail as he may influence the witnesses.

Keeping in view the facts and circumstances of the case, particularly when the complainant party did not name the petitioner specifically on two occasions i.e. in the FIR as well as in the proceedings under Section 174 Cr.P.C. when other assailants namely Jasbir @ Jassa, Satish @ Karmu, Satish @ Khali, Anil, Jaibir and Pardeep @ Deepu were named. The alleged identification of the petitioner along with Satish @ Kamru, Jasbir @ Jassa and Vikash would remain debatable. The complainant did not implicate the petitioner in his statement earlier recorded under Section 161 Cr.P.C. and nothing has been recovered from the petitioner.

In CRM-M No.23200 of 2020, it can be noticed that the petitioners namely Satish @ Tau, Jasbir @ Jassa and Vikash were allegedly identified along with Sandeep @ Dipi-petitioner in CRM-M No.17387 of 2020. Petitioners No.4 and 5 namely Rohtash @ Bophal and Satish @ Khali were subsequently arrested on the basis of disclosure statement of co-accused. Complicity of the petitioners would remain debatable.

In view of the situation arising out of COVID-19 pandemic and without meaning anything on the merits of the case, petition is allowed. Petitioner(s) are ordered to be released on regular bail, subject to their furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

August 28, 2020
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No