

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

CRM-M-25848-2020 (O&M)

Date of Decision : 01.10.2020

Raghubir Singh @ Lucky and anotherPetitioners

Versus

State of PunjabRespondent

CORAM : Hon'ble Mr. Justice Gurbinder Singh Gill

Present: Mr. Gautam Dutt, Advocate, counsel for the petitioners.

Mr. Randhir Singh Thind, DAG, Punjab.

(Proceedings conducted through video conferencing)

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Gurbinder Singh Gill, J.

1. The petitioners Raghubir Singh @ Lucky and Paramjit Singh @ Pammu seek grant of regular bail in a case registered vide FIR No. 30 dated 26.2.2020 under Sections 302, 307, 354, 341, 323, 365, 506 and 148/149 of IPC and under section 3(1)(s) of SC & ST (Prevention of Atrocities) Act 1989 at Police Station Adampur, District Jalandhar.
2. The F.I.R. was registered at the instance of Smt. Parveen Kumari, wherein it is alleged that on 25.2.2020, when she along with her 'devar' (younger brother of husband) namely Ravi Pal along with her two daughters were proceeding from their house to her parental home

on a motor-cycle and were barely 50-60 yards from their home, they were waylaid by six youths namely *Lucky* (petitioner Raghbir Singh) son of Manjit Singh, *Raja* (Rajinder Singh) son of Sarabjeet Singh, *Sandip Singh* son of Dev Raj, *Pammu* (petitioner Paramjit Singh) son of Bali, *Jassa* son of Pargat Singh, who surrounded them from all sides. It is alleged that Raja pulled her down from the motorcycle by catching hold of her hair and gave beatings to her and also attempted to molest her. It is alleged that thereafter Jassa gave a blow with '*dattar*' on head of complainant's '*devar*' Ravi Pal upon which he fell down and thereafter all other accused gave merciless beatings to him and also uttered derogatory words about their caste. Upon alarm raised by them, her '*devrani*' (sister-in-law) Rekha Rani came there to rescue them but even she was caused injuries. Subsequently, upon other villagers being attracted to the spot, the said accused fled away from the spot on motorcycles of 5-6 unknown persons. It is further the case of prosecution that although Ravi Pal was taken to hospital but he succumbed to his injuries on 29.2.2020.

3. The learned counsel for the petitioners has submitted that they have falsely been implicated in the present case and that the falsity would be evident from the following facts:

- (i) that Praveen Kumari complainant, in her supplementary statement recorded on 1.3.2020 came out with an entirely different statement wherein the fatal blow has been attributed to Rajender Singh @ Raja who is alleged to have inflicted a blow with a '*Baala*' (thick heavy baton) to deceased although there is no reference to any such weapon in F.I.R. wherein the fatal blow was attributed to Jaspreet Singh @ Jassa with a '*dattar*';

- (ii) that on 27.2.2020, Rekha Rani, who as per F.I.R. had reached at the spot subsequently got her statement recorded in terms of Section 161 Cr.P.C. to the effect that there were three more assailants namely Manjit Singh, Davinder Singh and Rupinder Singh, which would show that the complainant party is all out to falsely implicate maximum number of persons;
- (iii) that in fact the matter was got investigated by a Special Investigating Team (S.I.T.) which found that infact a fight had taken place on the morning of 25.2.2020 between the deceased Ravi Pal and Rajinder Singh @ Raja who was armed with a 'baala' and Jaspreet Singh @ Jassa who was armed with a 'dattar' and that Rajinder Singh @ Raja had inflicted a blow with 'baala' on the head of deceased and that the present petitioners were infact not even present at the spot at the time of occurrence as per "Call Detail Records' which reveals that while petitioner no. 1 was at Adampur at the time of occurrence, petitioner No. 2 Paramjit Singh, who is a milk vendor, was present at different places delivering milk to his customers;
- (iv) that the S.I.T., however, implicated the present petitioners as accused for offences other than offence under Section 302 IPC, mainly on the ground that an altercation had taken place between the deceased and the petitioners one day prior to the incident of 25.2.2020 i.e. on 24.2.2020 and although the parties went to the police station but did not choose to initiate any action in respect of the said incident of 24.2.2020 but SIT chose to give the incident of 25.2.2020 an element of continuation of incident of 24th February, 2020 and as such indicted the petitioners for the occurrence which had taken place on 25th February, 2020 despite the fact that petitioners were not found to be present at all on 25.2.2020.

4. The learned State counsel, while opposing the petition, has submitted that since the petitioners are specifically named in the F.I.R. by the

complainant, before whom the occurrence had taken place, therefore, the plea of *alibi* being set up by the petitioners cannot be accepted at this stage. The learned counsel further submitted that in any case, the petitioners to be successful in their plea of *alibi*, are required to establish, by leading cogent, convincing and unimpeachable evidence that they were present at a place so far away from the place of incident that it was humanly not possible for them to be present at the place of occurrence. It has been submitted that since the accused have not led any such convincing evidence to rule out their presence at the place of occurrence, their plea of *alibi* cannot be accepted. It has further been submitted that the petitioners, in any case, cannot escape from the liability as it stands established that they had an altercation and fight with the deceased one day prior to the occurrence and thus, would have motive to connive and conspire with co-accused to settle scores with the deceased by eliminating him.

5. I have considered rival submissions addressed before this Court. As regards the first submission on behalf of petitioners to the effect that there is inconsistency in supplementary statement of complainant wherein the fatal blow has been assigned to Rajinder Singh with a '*baala*' instead of Jaspreet Singh @ Jassa to whom it was assigned in F.I.R., this Court is not inclined to give much weightage to the said fact inasmuch as both the aforesaid persons, in any case, were named in the F.I.R. and any error as regards attribution of injury cannot be said to be so fatal so as to absolutely discard the version of the complainant as it can well be expected that the complainant who is a lady, before

whom a gory murder had taken place would be in a state of shock and there could be some variation in description of incident.

6. The petitioners' submission that Rekha Rani's disclosure of names of three more persons being accused is an improvement and would show falsity of prosecution's case cannot be accepted at this stage particularly when there is a mention in the FIR itself that the five named assailants had fled away on motorcycles of 5-6 unknown persons.
7. However, a Special Investigation Team (S.I.T.), which had been constituted in the present case, upon examining the 'Call Detail Records', had come to a conclusion that as per 'Tower Location' information, none of the two petitioners was present at the spot at the time of occurrence. While petitioner no. 1 Raghbir Singh @ Lucky is found to be in village Adampur at the time of occurrence, petitioner No. 2 Paramjit Singh who is a milk vendor, was found to be present at different places while delivering milk to his customers. Although, the complete 'Call Detail Records' has not been produced by the State during the course of hearing of this petition, but at this stage this Court would not like to doubt the findings as recorded by the Special Investigating Team regarding the petitioners being not present at the place of occurrence. In any case, at this stage, this Court being seized of a matter pertaining to grant of bail, would not like to make any comment on the findings recorded by S.I.T. Admittedly, none of the petitioners is attributed the fatal blow either as per the FIR or as per the supplementary statement made by the complainant. The petitioners have been behind bars since the last more than 6 months and challan

already stands presented. None of the petitioners is stated to be involved in any other case, as per the custody certificate.

8. In view of foregoing discussion, especially the report of S.I.T. as regards the *alibi* of the petitioners and while noticing that they have been behind bars since the last more than 6 months and are not wanted in any other case, the petition is hereby accepted. The petitioners are ordered to be released on bail subject to their furnishing bail bonds/surety bonds to the satisfaction of the trial Court/CJM/duty Magistrate.
9. It is, however, clarified that none of the observations made above shall be taken to be an expression as regards merits of the main case, especially the observations pertaining to *alibi* of the petitioners. In case, the petitioners plead *alibi* as a defence during the course of trial, they would be required to prove the same by leading cogent and convincing evidence to the effect that they were present at a place so far away from the place of incident that it was absolutely not possible for them to be present at the place of occurrence.

01.10.2020
(kamal)

(GURVINDER SINGH GILL)
JUDGE

Whether reasoned / speaking? **Yes / No**

Whether reportable? **Yes / No**