

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

CRM-M No. 21749 of 2020

Date of decision: 08.11.2021

Nitesh Bansal

...Petitioner

Versus

State of U. T. Chandigarh

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R. S. Cheema, Senior Advocate with
Ms. Sumanjit Kaur, Advocate, for the petitioner.

Mr. A. M. Punchhi, Public Prosecutor, U. T. Chandigarh.

ARUN MONGA, J.

Having been declined bail by the court below, petitioner seeks the concession thereof from this court.

2. Petitioner is an accused in FIR No. 32 dated 22.02.2020 registered under Sections 304, 336 and 36 IPC at Police Station, Sector-34, Chandigarh.

3. Relevant facts in brief first. Petitioner is the tenant of 253 square yards residential house No. 3325 Sector 32-D, Chandigarh comprising of ground floor, first floor and second floor. Premises in question had been initially given on rent to Nitesh Bansal and Nitish Popli for three years from 01.09.2018 to 31.08.2021. Tenants were using the same as paying guest accommodation. Later, Nitish Popli left and Nitesh Bansal, petitioner herein, then alone continued to run the paying guest facility. On 22.02.2020, a fire broke out at the said premises due to electric short circuit.

It resulted in the death of three young girls and caused severe burn injuries

to two others, who were amongst the residents of the house as paying guests of Nitesh Bansal. Total 28 girls were staying as paying guests in the house on the fateful day. It is alleged that petitioner Nitesh Bansal had, with the connivance, permission and knowledge of the owners of the premises and their common intention, made unauthorised alterations by making small partitions in rooms and cabins with inflammable material like fibre sheets and wooden structures in the house to run the business of paying guest accommodation. All that had been done without adopting any safety measures and making safety arrangements and in violation of statutory provisions and regulations, against the norms of construction principles, without approval from the competent authorities and without leaving any space or making arrangements for the guests to escape from the premises in case of any emergency like fire, electric short circuit and without providing any window or emergency exit. The purpose was to earn more money by accommodating more paying guests than it was safely possible to accommodate in the house.

4. Investigation is now complete and even the final report of the investigation/challan has been filed. Later, a supplementary challan dated 17.09.2020 was also filed. Charges were framed on 02.08.2021 by trial court and the trial is under progress.

5. Mr. R.S. Cheema, learned senior counsel for the petitioner strenuously argued that the petitioner has been in custody since 22.02.2020 i.e. the date of occurrence and his further detention in preventive custody at this stage is rather too harsh, given that there are no allegations that if enlarged on bail he will influence the witnesses. He pointed out that trial has already commenced and 4 out of five spot witnesses of the occurrence have

already been examined. Only one of the spot witnesses remains to be examined. The testimony of remaining witnesses cited by the prosecution would be of formal nature. In any case, he would contend that four out of total five material spot witnesses have already been examined and the fifth such witness is in Canada. Owing to the Covid-19 situation, she is unable to take flight to India and the prosecution is unable to produce her. He would further argue that the petitioner is entitled to properly defend himself and have proper legal assistance after grant of concession of bail. Keeping him further in custody by denying bail, therefore, would be denial of his basic rights to defend himself. As regards the charge-sheet filed by the prosecution and the charges framed by the trial court, he would argue that the charges are highly debateable. It is argued that as per allegations, in the worst case, the penal provision attracted against the petitioner is Section 304-A IPC i.e. causing death by negligence. The maximum punishment provided for the same is imprisonment for a term which may extend upto two years, or fine or both. It is argued that assuming that the petitioner is to be convicted under Section *ibid*, he has already undergone almost the maximum of the imprisonment provided for the offence having been in custody for the last about 21 months as against the maximum imprisonment of 24 months. He, therefore, submitted that further custody of the petitioner by no stretch of imagination can be preventive and the same is rather punitive beyond the punishment provided under Section 304-A IPC. He would also argue that there is no likelihood of tampering of the remaining prosecution evidence by the petitioner as most of that is circumstantial or documentary.

6. Qua part-II of Section 304 IPC, he would argue that whether or not the petitioner had knowledge of the likelihood of what could have

happened due to the occurrence is debateable. The petitioner prima facie is not involved in any commission of any such offence. Merely on that ground it is rather unfortunate that the petitioner is being kept in custody. In support thereof, he would rely on Apex Court Judgement in Keshub Mahindra vs State of MP 1996 (6) Supreme Court Cases 129 and Sushil Ansal vs State through Central Bureau of Investigation 2014 (6) Supreme Court Cases 173.

7. It is also submitted that the petitioner had himself surrendered before the police on 27.02.2020. For quite some time, there has been no progress in the trial. Petitioner is not a habitual offender and has not been involved in any offence. He is first offender allegedly, if at all. In fact, he has not committed any crime. There is no chance of his absconding or tampering with the prosecution witnesses if he is granted bail. No more purpose would be served by keeping the petitioner behind the bars. Learned senior counsel summed up stating that mere fact or knowledge, assuming if it were to be so for the arguments sake, that the premises in question was being used as paying guest accommodation, which was to the knowledge of everyone, including officials of Chandigarh Administration, would not *per se* amount to any culpability on the part of petitioner. Mr. R.S.Cheema, to rest his case, philosophically quoted Khalil Gibran in support of his arguments to say “*And as a single leaf turns not yellow but with the silent knowledge of the whole tree.*”

8. On the other hand, Mr. A.M. Punchhi, learned counsel for the prosecution strenuously opposed the submissions of learned senior counsel. He relied on the Lease /Rent Agreement dated 30.08.2018 and would argue that a bare perusal of Clause 11 thereof revealed that partition in the building had been carried out illegally. Notwithstanding the provision in the Rent

Agreement, the petitioner agreed to the impermissible partitions. He submitted that as per Chandigarh Estate Rules 2007 compulsory registration of the premises was required before commencing any business activity, which was not done. He pointed out that 28 girls were staying at the house at the relevant time and argued that the girls were made to stay like sardines. No police verification was carried out either. Petitioner cannot claim that he did not have the knowledge of adverse consequences in the event of untoward incident took place in the premises. He would contend that, therefore, the charges have rightly been framed *inter alia* under Section 304 IPC and that the petitioner does not deserve bail.

9. I have heard rival contentions of learned counsel for the parties and I am of the view that petitioner is entitled to bail.

10. Petitioner has been challaned and is facing trial for offences under section 304, 336 and 36 IPC. At this stage, it may not be either proper or necessary to go into and express any opinion about the so-called violations, as pointed out by the learned Public Prosecutor, of the building bye-laws, regulations by making of partitions/cabins and the use of the residential building for paying guest accommodation without sanction from competent authority.

11. Adverting to ingredients of section 304 IPC, which comprises of two parts, and for ready reference is reproduced below:

“304. Punishment for culpable homicide not amounting to murder.- Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years , and shall also be liable to fine, if the act by which the death is caused, is done **with the intention of causing death, or of causing such bodily injury as is likely to cause death,**
Or

*with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, **but without any intention to cause death, or to cause such bodily injury as is likely to cause death.***”

The sine qua non for applicability of Part I of the section *ibid* seems that the death is caused with the intention of causing hurt or of the causing of such bodily injury as is likely to cause death. Neither there is any allegation in the police challan nor is there any indication in charge framed by the learned trial Court that the petitioner had any intention of causing hurt or of causing such bodily injury to the deceased or the injured persons as was likely to cause death. To my mind *prima facie* Part I of Section 304 IPC does not seem attracted in the case, subject, of course, to final outcome of the trial.

12. As to applicability of Part-II of the section *supra*, let us assume, without holding, that in the worst case scenario the same is to be attracted. Again it is though subject to the final outcome of the trial. The punishment provided for the offence under of Section 304 IPC Part II is imprisonment for 10 years, or fine or both. What is to be noticed is, that there is no minimum punishment prescribed for the offence under Part II of the section *ibid*. On the other hand, maximum punishment for offence under Section 304-A of the IPC is 24 months out of which the petitioner has already undergone about 21 months.

12. The argument of the learned counsel for the prosecution that the petitioner is likely to influence the witnesses and/or abscond during the pendency of the trial, *prima facie* does not seem to be tenable since, concededly, most of the material witnesses have already been examined,

except Ms. Jasmine Kaur, who is residing in Canada. Recording of the statements of the rest of the official witnesses will still take some time.

13. As regards Ms. Jasmine Kaur, the material witness yet to be examined, in the course of hearing of instant bail petition on earlier occasion, this Court also made attempt to get the needful done and passed the following order dated 27.09.2021:-

“Apropos order dated 17.08.2021, testimony of the witnesses named therein has been recorded, except Ms. Jasmine Kaur who is stated to be studying in Canada. Due to the pandemic medical protocol currently being observed, no flights are since operational, she cannot come physically for recording of her statement before the trial Court. In the premise, steps are underway to make alternative arrangements to record her statement through video-conference. Needful be done on or before the next date of hearing. Trial Court is requested to take appropriate steps for arranging the videoconference. Hearing in the bail petitions is being deferred to await the outcome thereof.

Post it on 13.10.2021.

It would be appreciated if expeditious steps are taken by the officials in the Ministry of External Affairs, as well as officials posted at High Commission of India at Canada. Copy of this order be conveyed to the concerned officials through e-mail by the registry of this court, upon their particulars being provided by the learned counsel for the prosecution and/or petitioners.”

13. Learned counsel for the prosecution submitted that pursuant to the above order, all attempts have been made and yet it may take 6 months’ time to get the testimony of PW Jasmine Kaur recorded. He also submitted that even though the aforesaid material witness is currently residing in Canada, the possibility of her being influenced by the petitioner cannot be ruled out. To me, the apprehension of the learned Public Prosecutor seems far fetched. Still, in order to avoid any such possibility as apprehended by the prosecution, appropriate conditions can be imposed on the petitioner that shall not either directly or indirectly try telephonically or through any

electronic method or through person approach the aforesaid material witness, until her statement is recorded by the trial court. As regards risk of the petitioner fleeing the country, he can be required to surrender his passport and a condition can be imposed requiring the trial court to ensure that the petitioner shall not leave the country without the prior permission of the trial Court.

14. The petitioner is in custody since 22.02.2020. Trial is not likely to conclude anytime soon as the Courts are currently functioning under certain restrictions caused by COVID-19 pandemic. Further detention of the petitioner in custody pending trial seems to be improper and unfair at this stage.

15. Considering the overall scenario, coupled with prolonged detention of more than 21 months already undergone, I am of the view that no useful purpose would be served by keeping the petitioner in further preventive custody and that he ought to be granted bail.

16. Accordingly, petitioner is directed to be released on bail subject to his surrendering the passport to the trial Court/Duty Judge and furnishing bail bonds and surety bonds to the satisfaction of the trial Court/Duty Judge by giving an undertaking *inter alia* that he shall not either directly or indirectly try telephonically or through any electronic method or through any person approach the prosecution witnesses, who are yet to be examined, until their statements are recorded by the trial court and that he shall not leave the country without the prior permission of the trial court.

17. It is made clear that observations of this Court made hereinabove are tentative and confined to the passing of the instant order and

that, while deciding the case, the trial Court shall take its own independent view without in any way being influenced by the aforesaid.

09.11.2021

vs

(Arun Monga)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No