

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

CRM-M-29933-2021 (O&M)

Date of decision: December 03, 2021

Kulwinder Singh

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.S. Cheema, Senior Advocate with
Mr. A.S. Cheema, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. M.S. Kathuria, Advocate for
Mr. Partap Singh, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for grant of regular bail to the petitioner in case FIR No.99 dated 14.3.2020 under Sections 302, 341, 323 read with Section 34 IPC, registered at Police Station Taraori, Karnal.

The learned Senior counsel has argued that as per the allegations in the FIR registered at the instance of Lakhwinder Singh, who is having two children, the elder child is a daughter named Gagan Kaur and younger child is a son Apsi @ Happy. About a year ago, petitioner-Kulwinder Singh had levelled allegations against his son Apsi @ Happy

for teasing his niece. On that account a Panchayat was convened in the village wherein the matter was amicably settled but Kulwinder Singh and his family continued to have a grudge against his son Apsi @ Happy. On 13.3.2020 at about 7.00 p.m. when his son Apsi @ Happy was going on motorcycle to get medicine for his mother Harvinder Kaur, his nephew Gurpreet Kaur was also with them and they were going on a motorcycle No.HR-05-BC-8967 to meet village Doctor Malkiat Singh. When three of them reached at village Shambi turning point, the accused persons were standing there armed with lathi, dandas and iron pipe. They blocked the way and brought down Apsi @ Happy from the motorcycle. Balkar Singh caused a blow with a hard stick on the chest of his son. Harvinder Kaur caused a blow on his waist, Karnail Singh caused a blow on his chest, Gurkreet Singh @ Gora caused injuries with iron pipe on chest, leg and waist of his son. All the accused further caused injuries all over the body of his son wherever possible. When his wife Harvinder Kaur and Gurpreet Singh intervened to save them, they were also given beatings. When they raised an alarm, the accused ran away from the spot with their respective weapons. His son, who was lying unconscious was taken to hospital at Nelokheri, from where he was referred to Karnal because of receiving multiple injuries and was admitted to Amritdhara Hospital, Karnal and on the next day, i.e. 14.3.2020, he succumbed to his injuries.

The learned Senior counsel has further submitted that the complainant is not an eye-witness though the police during investigation has recorded the statement of the two eye-witnesses, i.e. Harvinder Kaur,

the mother of the deceased and Gurpreet Singh-cousin of deceased who was accompanying him. The learned Senior counsel has submitted that as per the hospital record the cause of death was cardiac arrest secondary to severe ARDS on 14.3.2020. It is further submitted that as per the post-mortem, no bone injury was seen. In the CT head, X-ray chest, CT thorax and on the basis of the FSL report, the following opinion was given regarding cause of death :-

“The opinion regarding the cause of death has already been given in this case on 20.10.2020 that “the cause of death in this case are injuries and its complications:.

In our opinion, it was a case of poly-trauma having Severe Acute Respiratory Distress Syndrome and Shock with Glasow Coma Scale E1M1V1 as reported in the hospital record and the findings noticed during autopsy and histopathological examination of viscera of deceased corroborated with the hospital record.

In our opinion, the complications due to injuries were Acute Respiratory Distress Syndrome followed by Cardiac Arrest.”

The learned Senior counsel further submitted that even similar opinion was given on 20.10.2020 when the SHO sought the opinion from the Government Hospital, Karnal, wherein it was opined that the cause of death in the case is injuries and its complications.

The learned Senior counsel has also submitted that during investigation, Balkar Singh and Kulwinder Singh were found innocent and Gurkreet Singh @ Gora, who was a juvenile but treated as an adult has been granted the concession of regular bail. Learned Senior counsel has also submitted that the custody of the petitioner is 01 year and 08 months, therefore, he may be granted the concession of regular bail.

The learned counsel has relied upon 1960 Criminal Law Journal 827 **Urmese Vs. State of Kerala**, to submit that the Kerala High Court in such circumstances where there is no specific opinion mentioned regarding cause of death, the conviction under Section 302 IPC was set aside.

A similar view has been taken in some other judgments, wherein post-trial when an accused was convicted under Section 302 IPC, in appeal the sentence was modified. However, all these case are not applicable to the present case, at this stage, as it is yet to be decided by way of the evidence of the medical experts who are yet to be examined and cross-examined about the cause of death.

The learned State counsel has filed the affidavit of the DSP, Karnal and submitted that there is a motive attributed to the petitioner in the FIR itself that on account of keeping a grudge against the deceased Apsi @ Happy for having teased the niece of petitioner-Kulwinder Singh, all the accused caused him injuries which resulted into his death. The detail of the investigation conducted by the police as well as the medical record his also

duly explained. It is stated that on 16.3.2020, the petitioner was arrested and suffered a disclosure statement confessing his involvement in the crime. His disclosure was followed by recovery of the weapon of offence, i.e. is a stick which he had used in the commission of the crime and was taken in custody by recovery memo.

It is also stated that as per the disclosure of co-accused Gurkreet Singh @ Gora, who was a juvenile, the motorcycle used by the accused person for committing the offence was also recovered. It is further stated that as per the CCTV footage of the spot collected by the Investigating Officer, co-accused Balkar Singh and Karnail Singh were kept in column No.2, while submitting the challan.

Counsel for the complainant has additionally argued that the motive is attributed to the petitioner himself and a specific role is attributed, who has caused multiple injuries to the deceased and in case, the petitioner is enlarged on bail, he is likely to threaten to the witnesses.

After hearing the counsel for the parties and considering that there are a serious allegations and the role attributed by the petitioner, I find no ground to grant the concession of regular bail to the petitioner.

The petition stands dismissed.

**(ARVIND SINGH SANGWAN)
JUDGE**

December 03, 2021
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No