

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

(105+206)

CRM-M-39274-2021 (O&M).
Date of Decision:-25.10.2021.

Johny and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amitabh Tewari, Advocate for the petitioners.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Deepender Singh, Advocate for respondent No.2-complainant.

VIKAS BAHL, J. (Oral)

CRM-34072-2021

This is an application under Section 482 Cr.P.C. for impleaing
Sumit Kumar (complainant) as respondent No.2.

For the reasons mentioned in the application, the same is
allowed and Sumit Kumar, complainant is ordered to be added as
respondent No.2 in the array of parties.

Amended memo of parties is taken on record.

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Application is allowed as prayed for, subject to all just
exceptions.

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This is a first petition under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case of FIR No.140 dated 25.04.2021 under Sections 304 and 34 of IPC, registered at Police Station, Bilaspur, Gurugram, Haryana.

Brief facts of the case are that the present FIR has been registered on the complaint of Sumit Kumar s/o Gajraj Singh Chauhan on the allegation that the petitioners, who are the sons of the uncle of the complainant along with their mother were getting stones crushed when the father of the complainant Gajraj Singh asked Johny, petitioner No.1 to cut the stone at some distance, as the condition of the aunt was not good and, thereafter, the petitioners picked up a quarrel on this issue and as per the version of the complainant, the petitioners gave beatings to the complainant's father on the chest and head with punches and stones along with their mother Sudesh Pappi, by virtue of which the complainant fell down on the ground and his hands and feet became cold and thereafter, he along with his brother Navneet arranged a vehicle and brought him to Paras Hospital, where the doctors checked him and declared him brought dead. Initially, the FIR was registered under Section 302 IPC and after the doctor's opinion, Section 302 IPC was deleted and Section 304 IPC was added.

Learned counsel for the petitioners has submitted that in the present case, even from the prosecution version, it is apparent that it is the complainant's father who came to the petitioners and not the petitioners who had gone to the complainant's father so as to pick a fight. It is further submitted that as per the prosecution, a specific opinion was sought by Hawa Singh, Police Station Bilaspur, Gurugram, from the Medical Officer,

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General Hospital, Gurugram and in this regard, learned counsel for the petitioners has referred to the letter dated 03.05.2021. The relevant portion thereof is reproduced hereinbelow:-

“To

The M.O.,

G.H., Gurugram.

*Application for giving opinion with regard
to the injury of the deceased Gajraj.*

Sir,

It is requested that the deceased Gajraj son of Mool Chand resident of Patti Devraj, Bhora, police station Bilaspur, Gurugram, has been found to be dead due to the impact of the punches and stones on his chest and head. The accused Johnney son of Jaikaran, resident of Bohra Kalan has produced the stone, which he had hit him during the quarrel, which has been taken into police possession through a memo. The stone is produced before you. Kindly opinion as to whether the deceased Gajraj has died due to the injuries inflicted to him by this stone or not.

Sd/- Hawa Singh

P.S. Bilaspur

Gurugram.

Viscera has been preserved and report is awaited, any cause of death and manner cannot be commented at this stage.”

It has been argued that a perusal of the said letter would show

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that a specific opinion had been sought as to whether the deceased had died due to the injuries inflicted upon him by the said stone or not. The response given by the Medical Officer vide letter dated 08.07.2021 (Annexure P-6) has also been referred to. The relevant portion of the said letter is reproduced hereinbelow:-

“To

The M.O.,

G.H., Gurugram

Application for giving opinion with regard to the injury of the deceased Gajraj.

It is requested that Gajraj son of Mool Chand, resident of Bohra Kalan, police station Bilaspur, Gurugram has died due to the hitting of stone. During the investigation, the accused Johnney son of Jaikaran has produced the stone, which was hit during the quarrel, which has been taken into police possession through a memo. The Histopathological report of the deceased Gajraj has been received from PGIMS, Rohtak. After perusing the report, kindly opine how the deceased Gajraj has died.

*Sd/- Hawa Singh
P.S. Bilaspur
Gurugram*

PMR DM/PHC/205/21

08.07.2021

On review of Histopathological report No.Path/777 dated 18.05.2021, stating sections from heart show features of Ischemic heart disease and both coronaries show moderate

atherosclerosis alongwith ecchyma and congestion in lungs. The Board is of the opinion that the cause of death is 'shock' due to heart/coronary artery disease."

Learned counsel for the petitioners has highlighted the fact that the said response would show that it has not even been remotely stated that the death had been caused due to the injuries inflicted upon the deceased by the stone, rather, the opinion of the doctor is that the cause of death is "shock due to heart/coronary artery disease". It is, thus, submitted that as per the said medical report, it is a case of natural death. It is further submitted that the petitioners were not armed with any weapon and, thus, it is apparently a case where the incident took place in the heat of the moment. It is also submitted that there is no opinion of the doctor to even remotely show that any of the injuries were either dangerous to life or were grievous in nature and that there was no injury on the chest of the deceased although, as per the allegations in the FIR, injuries were alleged to have been given on his chest. It is submitted that the petitioners have been in custody since 25.04.2021 and the challan in the present case has already been filed and the petitioners are not involved in any other case and the trial is likely to take time and there are as many as 17 witnesses and none of them have been examined. It is further submitted that the petitioners had no knowledge about the medical condition of the deceased and has referred to the FIR to state that even as per the first version, there was no allegation that the petitioners were aware about the medical condition of the deceased. Learned counsel for the petitioners has relied upon a judgment of the Delhi High Court reported as **2015 SCC OnLine Del 9756** titled as **Aas Mohammad Etc. Vs. State**, to contend that even in a case wherein the

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accused had picked up a bag (theli) of weights and had given blows with it as well as fist blows on the chest and abdomen of his father Nek Shah and the death had been stated to be caused due to coronary artery disease, it was observed that offence under Section 304 of IPC was not made out.

On the other hand, learned State counsel as well as Mr. Deepender Singh, learned counsel appearing for respondent No.2/complainant, have opposed the petition for grant of regular bail. It has been contended on their behalf that in the present case, there were four injuries caused to the deceased, one being on the right elbow, another being on the right knee and two abraded bruises each on the left side of forehead and it has also been submitted that in fact there was a fissure fracture in the base of skull of the deceased. It is submitted that as per the statement of Navneet, the other son of the deceased Gajraj Singh Chauhan recorded under Section 161 Cr.P.C., it had been stated that the deceased had got a stunt placed in his heart and the entire family of the petitioners was aware about it. It is further submitted that although the said deceased had gone to the petitioners' party asking them to stop the work of stone cutting but there was no overt act committed by the said deceased and, thus, the petitioners are solely responsible for the incident. It is also submitted that on account of the injuries, shock had been suffered by the deceased and it is on account of the same that the deceased had died. Reference has also been made to the report of the Department of Pathology, PGIMS, Rohtak, at page 35 of the paper book to show that there was a stunt in the heart of the deceased. Further reference has been made to Explanation 1 to Section 299 of IPC to contend that in case a bodily injury has been caused to another who is laboring under a disorder, disease or bodily infirmity, and thereby

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accelerates the death of that other, shall be deemed to have caused his death and that in the present case, by beating the deceased with stones, the death of the deceased had been accelerated. It is also submitted that there was a fissure fracture on the base of the skull as per the post-mortem report (Annexure P-3) and even though there is no opinion as to whether the said injury was dangerous to life or not and if it was grievous or not, but as per the provisions of Section 320 IPC, a fracture would come within the meaning of grievous injury.

Learned counsel for the petitioner, in rebuttal, has submitted that the statement of Navneet which had been recorded is an improvement from what has been stated in the FIR, inasmuch as in the FIR, it had not been stated that the petitioners had the knowledge that there was a stunt in the heart of the deceased. It is further submitted that even from the prosecution case it is not coming out clearly as to whether the said Navneet was even a witness to the alleged occurrence or not. It is also submitted that till the time there is an opinion of the doctor that a particular injury is dangerous to life, the provision of Section 307 IPC would not be attracted and, moreso, even assuming an injury is grievous in nature, at best the provision of Section 325 IPC, which is bailable, would be attracted. It is also submitted that the version of the complainant stands diluted, inasmuch as a role had been attributed to the mother of the petitioners but, however, the mother had been exonerated during investigation.

This Court has heard the learned counsel for the parties.

A perusal of the prosecution version would show that it is the deceased who had stopped the petitioners from cutting the stones at the place where the petitioners were cutting the same and had asked them to

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do the same at some distance. In the FIR, it has not been stated that the petitioners had the knowledge that the deceased had a heart problem or had stunt in the heart, rather, it has been stated in the FIR that condition of the wife of the deceased was not good. A perusal of the letters dated 03.05.2021 and 08.07.2021, which have been reproduced hereinabove would show that there was a specific query which had been put by Hawa Singh, Police Station Bilaspur to the Medical Officer, General Hospital Gurgaon, as to whether the deceased had died due to the injuries inflicted upon him by the stone or not and in response, there is nothing which has been stated by the said Medical Officer to the effect that the deceased had died due to the injury caused by the stone, rather, the opinion was that he had died on account of shock due to heart/coronary artery disease. Even from the medical documents relied upon by both the parties, it is clear that there was a stunt in the heart of the deceased. It would be a moot point during trial as to whether the petitioners had the knowledge of the said heart condition of the deceased or not. It would also be a moot point as to whether in the present case, the injury which is alleged to have been caused to the deceased had any relation to the death of the deceased or it was a case of natural death. The medical opinion, as it stands today, in addition to the fact that the petitioners have been in custody since 25.04.2021 and the challan has been filed in the present case and there are as many as 17 witnesses and none of them have been examined and the trial is likely to take time moreso, on account of the pandemic situation and also the fact that the petitioners are not involved in any other case and the fact that the mother of the petitioners who was also initially involved in the incident, has been declared to be innocent during investigation, would entitle the

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petitioners to grant of regular bail and, thus, the present petition deserves to be allowed.

Accordingly, the present petition is allowed and the petitioners are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to the fact that they are not required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

October 25, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No