

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

**CRM-M No.38045 of 2020 (O&M)
Date of Decision: 27.04.2021**

Juber

.....Petitioner

Vs

State of Haryana

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Rosi, Advocate
for the petitioner.

Mr. Anant Kataria, D.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. The case was taken up for hearing through video conferencing.

[2]. Petitioner seeks grant of regular bail under Section 439 Cr.P.C. in case bearing FIR No.213 dated 14.06.2019, registered under Sections 147, 148, 323, 302, 506 IPC at P.S. Punhana, District Nuh.

[3]. As per prosecution case, the FIR was lodged by Fajjar son of Mohd. Khan in respect of murder of his son Mubarik. As per allegations, on 14.06.2019 at about 11.00 A.M., the complainant and his son Mubarik were irrigating their fields.

About 2-3 *killa* away, they heard some noise of quarreling near the houses of petitioner, Abdeen and Hassan etc. On hearing the noise, complainant and his son Mubarik reached at the spot, where they met Jahul, Azad, Juber (petitioner), Rajaoon, Abdeen, Shahid, Abbas, Faku and Sahun. The aforesaid persons on seeing the complainant and his son exhorted that rivals have come. Jahul exhorted that to settle old account, they be not left scot free. All the aforesaid persons in connivance with each other, attacked upon the complainant and his son Mubarik with *lathi*, *danda*, iron rods and stones. Jahul gave *lathi* blow which hit on the left leg of son of the complainant. Faku hit a stone blow on his left toe. Juber hit stone blow on the son of complainant which hit on his forehead and nose. Sahid gave stone blow with hit backside of neck of son of the complainant. Son of the complainant fell down at the spot. When the complainant tried to help his son, then Abdeen and Abbas gave *lathi* and iron rod blows from backside which hit on the ear and temple of the complainant. When the complainant raised alarm, then his brother Sareh, Hassan and Sharif came on the spot and rescued them from the clutches of the assailants. Mubarik ultimately died.

[4]. As per post mortem report of Mubarik, 8 injuries were found on his person. The same are as under:-

Sr. No.	Injuries	Marked	<i>Injury Number</i>
1	Reddish brown contusion of size 3.5 x 1.5 cm present over middle of forehead.	No	1
2	Reddish brown contusion of size 4 x 2 cm present over nose extended from tip to root of nose.	No	2
3	A reddish contusion present on left temporo parietal region of size 5 x 5 cm.	No	3
4	Swelling of size 3 x 4 cm present over mid saggital region of skull anterior to vertex on dissection echymosis present below above 4 injuries. On further dissection there was extra dural hemorrhage over the parietal area on opening of skull there was diffuse sub dural hemorrhage present over the bilateral cerebral hemispheres and sub arachenoid hemorrhage present over the left parietal area.	No	4
5	Four contusions size varying from 0.5 x 0.5 cm to 1 x 1 cm present on dorsal aspect right wrist and adjoining hand.	No	5
6	A reddish brown contusion of size 1 x 1 present over right middle finger dorsal aspect of metacarpophalangeal joint.	No	6
7	Abrated contusion of size 2 x 1 cm on tip of left toe. Nail also involved.	No	7
8	1.5 x 1 cm reddish brown contusion present on dorsal aspect of left 2 nd , 3 rd , 4 th and 5 th toes. On dissection echymosis present below above injuries.	No	8

[5]. Perusal of the aforesaid table would show that injury Nos.1 and 2 were on the middle of forehead and on the nose. According to the allegations in the FIR, these injuries are referable to the petitioner. Injury Nos.3 and 4 were found on the left temporo parietal region and over mid saggital region of skull. As per FIR, authorship of injury nos.3 and 4 has not come forth. As per opinion of the Doctor, the cause of death was the head injury and its complications which were sufficient to cause death in ordinary course of nature and all the injuries were *ante mortem* in nature.

[6]. Learned counsel for the petitioner submitted that in order to connect the petitioner with cause of death, the prosecution has recorded the disclosure statement of other co-accused in a very perfunctory manner so as to attribute the head and neck injuries of the deceased to the petitioner. As per FIR, no such injuries were attributed to the petitioner in any manner. The disclosure statement of the petitioner has been recorded and is self-incrimination viz-a-viz. the injuries on the head and neck of Mubarik. Such a statement has no evidentiary value being made in police custody. Disclosure statements of the co-accused in police custody to the same effect have no evidentiary value. Even otherwise, as per post *mortem* report, there was no injury on the neck of the deceased.

[7]. Learned counsel further submitted that the injury on the forehead cannot be equated with temporo parietal region or mid saggital region of skull in any manner. The temporo parietal junction/region is an area of brain where the temporal and parietal lobes meet at the posterior end of the lateral sulcus. Temporo pareital junction is separately situated in the head mechanism from that of middle of forehead. Similarly area of frontal temporal, parietal and occipital are separately described in the nomenclature of the head. All the areas are distinct and cannot be having overlapping configuration. Similarly in the

anatomy, the sagittal plane or longitudinal plane is an anatomical plane which divides the body into right and left parts. Injury No.4 even on the aforesaid interpretation cannot be attributed to the petitioner.

[8]. Learned counsel further submitted that co-accused Sagoon has been granted regular bail by this Court vide order dated 09.10.2020 passed in CRM-M No.22662 of 2020. Total 9 accused were named in the aforesaid occurrence. Six accused were found to be innocent by the police. Challan was presented against Juber, Sahib @ Sahid and Sagoon. Sahib @ Sahid was found to be a juvenile in conflict with law. He had inflicted a blow with cemented tile/residual block on the neck of Mubarik. The injury on the neck was debatable and he was granted bail by the Special Judge, Children Court, Mewat vide order dated 23.01.2020. Sagoon was attributed with a *danda* blow on the leg of the deceased.

[9]. The bail was declined to the petitioner on the premise that the cause of death was head injury and its complications which were found to be sufficient to cause death in ordinary course of nature. The injury on the head viz-a-viz. the injury attributed *qua* petitioner on the forehead would remain debatable. The post *mortem* report refers to specific injuries on the forehead and nose and those injuries are injury No.1 and 2.

Injury Nos.3 and 4 viz-a-viz. their author would remain debatable. Petitioner is in custody since 15.06.2019. In view of allegations, no recovery could be made from the petitioner as he was alleged author of giving stone blows on the son of complainant which hit on his forehead and nose. The trial of the case may take some time in its culmination in view of the situation arising out due to COVID-19 pandemic.

[10]. Looking to the aforesaid facts and without adverting to the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

[11]. In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

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

April 27, 2021

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No