

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204/3)

Date of Decision: 17.02.2021

1)

Crl.Misc.No. M-39776 of 2020

Jaswinder Singh

...Petitioner

Versus

State of Haryana

...Respondent

2)

Crl.Misc.No. M-41019 of 2020

Gulab Singh

...Petitioner

Versus

State of Haryana

...Respondent

3)

Crl.Misc.No. M-41115 of 2020

Sajjan Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:

Mr. Namit Khurana, Advocate and
Mr. Gurinder Singh Goraya, Advocate
for the petitioners.
Mr. Surender Singh, AAG, Haryana.
Mr. Mandeep Nehra, Advocate, for the complainant.

AMOL RATTAN SINGH, J. (Oral)

Case heard by video conferencing.

By these three petitions, the petitioners all seek admitted to anticipatory bail under the provisions of Section 438 of the Cr.P.C., upon FIR no.161, dated 17.09.2020, having been registered at Police Station Radaur, District Yamuna Nagar, alleging therein commission of offences punishable under the provisions of Sections 148, 149, 323, 506, 325, 307 of the IPC and Section 3 (2) (VA) of the Schedule Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989.

Notice of motion having been issued on different dates in these three petitions, the petitioners were directed to join investigation and in the meanwhile in case they were sought to be arrested, they were ordered to be admitted to interim bail to the satisfaction of the arresting officer.

Thereafter , a common short reply having been filed by way of an affidavit of the DSP, Radour, dated 07.01.2021, a major discrepancy was found by this court in the description of the injuries on the two injured, i.e. Mam Chand and Krishan Lal, as was noticed in the order dated 12.01.2021, which is reproduced as follows:-

“Cases heard by video conferencing.

Though an affidavit dated 7.1.2021 has been filed by the DSP, Radaur, Yamuna Nagar, however it is seen that there is a major discrepancy in what is stated in paragraphs 5 and 6 to what is stated immediately thereafter, to the effect that as per the CT scan report dated 16.9.2020 (copy Annexure R-4 with the affidavit), Krishan Lal is stated to have received a fracture in the left temporal bone and left parietal bone, which as per the doctor was potentially threatening to life.

However, Annexure R-4 is seen to be a CT scan report in the case of Mam Chand with the opinion annexed as Annexure R-5 also being in respect of Mam Chand, stating therein that the injuries received by him were grievous in nature with the potential of a threat to life.

It is further seen that in the MLR of Krishan Lal (copy Annexure R-1 with the affidavit), the first wound is described as follows:-

1. Multiple tiny hemorrhagic contusions seen in right temporal lobe.

As regards the MLR of Mam Chand (copy Annexure R-3), there is no injury shown on his head at all, with all the injuries being in the

region of his arms/shoulder/hand.

Consequently, the Civil Surgeon, Yamuna Nagar, is directed to go into the matter and to file his own affidavit, explaining the discrepancies in the medical record of the two patients, i.e. Krishan Lal and Mam Chand, annexed as Annexures R-1 to R-5 with the reply of the DSP, before the next date of hearing.

It is made clear that if a proper explanation is not given, the Civil Surgeon, Yamuna Nagar, and if necessary the Director General Health Services, Haryana, shall be summoned to court.

Adjourned to 4.2.2021.

The orders passed by this court in the case of a co-accused, Sachin Kumar, be also put up alongwith these petitions on the next date of hearing.

A photocopy of this order be also placed on the files of other connected cases.”

Thereafter, a short affidavit of the DSP was filed trying to explain the discrepancies but with discrepancies not having been clarified, the Civil Surgeon, Yamuna Nagar, was directed to file his own affidavit, which has now been filed (dated 12.02.2021).

As per the said affidavit, the Medical Officer, CHC, Radour, had medico legally examined Mam Chand and had found the following injuries on his person:-

“(i) Bruise of 5x5 cm of reddish bluish discolouration was present over the left frontal region of head.

(ii) Linear abrasion of size 5 cm present over the left deltoid region of arm.

(iii) Linear swelling mark of size 10 cm of reddish discolouraton present over the back side of the right shoulder.

(iv) Complaining of pain in B/L arm & fore arm & B/L leg on

examination, no external mark of injury seen.

Nature of injury : (i) Surgeon opinion, (ii) (iii) (iv) ortho opinion.

Duration: (i) (ii) (iii) within 12hrs. and (iv) cannot be assessed.

Weapon: all blunt.”

Though the patient was referred to the District Civil Hospital, however it seems he went to a private hospital thereafter and was admitted there.

Subsequently, on the basis of a CT scan report from the private hospital, an opinion was given by the Medical Officer, CHC, Radour, that the injuries were threatening to life, with “multiple tiny hemorrhagic contusions seen in right temporal lobe, SAH in the right temporal and parietal region, SDH of maximum thickness 5 mm in the right temporal and parietal region or mass effect seen on right lateral ventricle with minimal leftward midline shift of 2.5 mm, fracture left squamous temporal bone and left parietal bone with overline scalp haematoma...”

As regards the injury to Krishan Lal, the following injuries were found on his person, when he was medico legally examined by the same medical officer at the CHC on the same date as Mam Chand, i.e. 16.09.2020. Those injuries read as follows:-

“(i) Deep lacerated wound of length 7-8 cm present over the parietal region on right of head.

(ii) Lacerated wound of size 1.5 cm present in between the left ring & little finger.

(iii) Abrasion of size 2x1 cm present on the Dorsum of left hand.

(iv) Tiny abrasion 0.5 cm present on the left little finger & above left index finger laterally.

(v) Complaining of pain in right middle finger O/E- No external mark of injury seen.

Nature of injury : (i) Surgeon opinion, (ii) (iii) (iv) (v) ortho opinion.

*Duration: (i) (ii) (iii) (iv) within 6 hrs. and (v) cannot be assessed.
Weapon: All blunt.”*

In the case of this patient (Krishan Lal), the CT scan report showed no significant abnormality and consequently his first injury on the parietal region was declared to be simple; but as regards the injury on his hand, it was found to be grievous as there was a fracture therein.

Learned State counsel has submitted that the earlier description of the injuries was therefore inadvertently erroneous, with the correct position having been given in the affidavit of the Civil Surgeon.

In the aforesaid background, it needs to be noticed that as per the FIR, two petitioners herein, i.e. Gulab Singh and Jaswinder, along with one Sachin and Mohit (son of Gulab Singh) and 5/6 other boys whose names the complainant did not know (but stated that he could identify them if brought before him), allegedly started hurling abuses on the complainants' father and started beating him (The complainant is the aforesaid Krishan Lal, his father being Mam Chand).

It is further stated that when the complainant and his mother tried to rescue Mam Chand, all three of them were beaten up with sticks and *bindas* due to which they suffered many injuries and were rescued by the Sarpanch of the village and nearby shopkeepers.

As per the specific role attributed to the assailants, the complainant stated that Mohit had caused injuries to him and his father in the head with *binda* and Sachin, Sajjan and other caused injuries in the back, hands and other parts of the body, with a threat also having been given that they would kill them and while fleeing away they hurled abuses pertaining

to the caste of the complainant and his family.

Thus, the FIR came to be registered under various provisions of the IPC as reproduced herein above, as also under the provisions of Section 3(2) (vi) of the Act of 1989.

Thus, in view of the above, learned counsel for the State, as also the complainant, submit that the petitioners do not deserve to be admitted to anticipatory bail, looking at the injuries received by the complainant and his father, as also the fact that even abuses were hurled against them pertaining to their caste.

Learned counsel for the petitioners on the other hand submitted that this court already having admitted a co-accused of the petitioners (Sachin Kumar) to bail vide its order dated 18.11.2020, the petitioners have to be treated at par, with him further submitting that in fact the allegations of abuses hurled pertaining to the caste, are wholly an after thought, because the aforesaid Sachin Kumar in fact also belongs to a Scheduled Caste and he would therefore not have been hurling abuses by caste upon the complainant and his family.

Learned counsel for the complainant has however countered by stating that simply because Sachin Kumar may or may not have uttered the same words, does not mean that the petitioners did not do so, and consequently their petitions deserve to be dismissed.

Having considered the matter, first of course the orders passed in the case of Sachin Kumar need to be referred to, by which he was first admitted to interim bail (on 27.10.2020, as were the petitioners on subsequent dates) and thereafter with that order made absolute on 18.11.2020.

The relevant part of the order dated 27.10.2020, admitting Sachin Kumar to interim bail, is reproduced as follows:-

“Learned counsel for the petitioner submits that, firstly, in fact the allegation with regard to abusing by caste is wholly unfounded, with even the petitioner belonging to the Scheduled Caste and therefore the said accusation in the FIR is only to try and ensure that the petitioner and his coaccused do not secure anticipatory bail.

Other than that, he submits that in an earlier incident of 12.9.2020, the petitioners' mother and aunt were badly injured at the hands of the complainant in the present FIR and his companions (in support of which he points to the copies of the MLRs annexed as Annexure P-2 with the petition, with one of them dated 12.9.2020 and the other 13.9.2020).

He further submits that the petitioner is not attributed any specific injury on any person on the 'complainants' side, with the injury dangerous to life attributed to one Mohit.

He further submits that despite the aforesaid injuries received by the petitioners' mother and aunt, no FIR was registered by the police till 7.10.2020.

Notice of motion.

Ms.Sheenu Sura, learned DAG, Haryana, accepts notice at the asking of the court.

Adjourned to 9.11.2020.

In the meanwhile, the petitioner is directed to join investigation within 5 days and upon him so joining if he is sought to be arrested, he shall be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

He shall also comply with all conditions stipulated in Section 438(2) of the Cr.P.C.”

Thereafter, on 18.11.2020, the following order had been passed in that case (by this very Bench):-

“1. As regards the injuries on the person of the complainant, learned State counsel submits that in fact a medical board was constituted with the injuries examined and with the board, as also the Civil Surgeon, Yamunanagar, having certified to the effect that the injuries were simple, including the one on the head, caused by a blunt weapon.

Upon query to Mr. Girdhar, whether the injury shown in the

photograph annexed with CRM-28194-2020, on the head of the complainant, can be said to have been caused by a blunt weapon, he submits that even in terms of what is contained in Modi's Legal Jurisprudence, such an injury on the scalp, though may give the impression of having been caused by a sharp edged weapon, can easily be caused by a blunt weapon also, owing to the fact that there is hardly any flesh on the scalp and the skin is also very thin.

As regards the merits of the case in CRM-M-34016-2020, learned State counsel submits on instructions that the petitioner has joined the investigation and recovery of a danda has been made from him.

That being so, with the injuries also stated to be simple injuries even as per the board of doctors constituted, without making any comment on the actual merits of the case, which would be considered by the competent court as per the evidence gathered/led, the interim order passed in favour of the petitioner, Sachin Kumar, is made absolute.”

Thus, obviously this court had admitted Sachin Kumar to bail on the ground that at that stage it had been stated that the injuries received by the injured were simple injuries, whereas with the entire sequence of events thereafter having been described in detail to this court (with the injuries eventually given in detailed by the Civil Surgeon). In my opinion, therefore, the present petitioners are not entitled to the concession of anticipatory bail, even presuming that this court erred in the case of Sachin Kumar and possibly should have gone deeper into the matter at that stage itself, as was done in the case of these petitions subsequently. Hat that been so, he also may not have been admitted to bail.

But be that as it may, because I may have erred once, does not mean that the same mistake has to be perpetuated, looking at the nature of the injuries now detailed in the affidavit of the Civil Surgeon.

Consequently, these being petitions seeking anticipatory bail to the petitioners, I do not think that they are entitled to that concession any

further than they have already enjoyed it, and hence these petitions are dismissed, with the interim orders passed in their favour vacated.

However, nothing stated at any stage in the orders passed in these petitions would affect the merits of the case, which would naturally proceed as per the evidence gathered and thereafter led before the trial court (if it comes to that stage). Further, if the petitioners are arrested and they seek to be admitted to bail under the provisions of Section 439 of the Cr.P.C., such petition would be considered on its own merits.

A copy of this order be placed on the file of the other connected matters too.

17.02.2021
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: No