

CRM-M-40057-2020(O&M)

[1]

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

Criminal Misc. No.M-40057 of 2020(O&M)

Date of Decision: May 13, 2021

Devender

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Salil Dev Singh Bali, Advocate
for the petitioner.

Mr.Tapan Kumar, DAG, Haryana.

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HARINDER SINGH SIDHU, J.

The petitioner has filed this petition under Section 439 Cr.P.C for grant of regular bail in case FIR No.113 dated 24.04.2020 under Sections 323, 34, 379B, 506 IPC (Sections 302, 325, 201 IPC added lateron), Police Station Industrial Area, District Bhiwani, Haryana.

The FIR was lodged on the complaint of Sikandar son of Devender. He stated that he was a Bank Manager in the HDFC Bank. His friend Vikas Gaur, who was living in Karnal had come to Bhiwani some days prior to the date of the incident. On 21.04.2020, the complainant was with his friend Satender @ Billu, who was also working in the HDFC Bank. Vikas Gaur called the complainant. He stated that he was staying at Gaur Guest House, Bhiwani which belonged to his brother Rakesh Gaur. He

asked the complainant to come to the said hotel, whereupon, the complainant and Satender went to Gaur Guest House in the car of the complainant. There, the complainant, Satender and Vikas had meals together. Satender went to a room in the hotel to rest. Vikas also went outside. After some time, the complainant heard noise of some arguments, whereupon, he noticed that Vikas was arguing with Devender, who was a friend of Tony. Tony was the nephew of Rakesh Gaur, the owner of the hotel. The petitioner asked them not to quarrel. Meanwhile, Tony the nephew of Rakesh Gaur came there along with one Prem @ Chamoli, who was also working in the hotel. Tony was carrying a baton. Tony started hitting the complainant with the baton. Devender and Prem @ Chamoli started kicking and giving fist blows to the complainant. Tony caused injuries on the elbow of the left hand and head of the complainant using the baton causing him to fall down. The complainant was rescued by Vikas. Then Tony told the complainant that as he (complainant) was his uncle in relationship so they were on the same side and that he should not interfere. Thereafter, Prem @ Chamoli told Tony that friend of the complainant was sleeping in the room. Tony, Prem @ Chamoli and Devender (petitioner) went to the room, where Satender was sleeping and caused him injuries. They forcibly brought him down. When Satender was lying down, Tony inflicted baton blows on his head. Satender became unconscious. Then all three – Tony, Prem @ Chamoli and Devender continued attacking Satender with baton, kicks and punches and caused lot of injuries to him. They also snatched phone of the complainant and forcibly took Rs.2500/- from the pockets of the trousers of the complainant and Rs.11,000/- from the pockets

of the trousers of Satender. They forced the complainant and Satender to go naked and prepared their video. Thereafter, they went away. While going away, they threatened the complainant that in case they lodged a complaint to the Police, they would be killed and the video would be made viral. Before going away they returned the mobile phones of the complainant and Satender. The complainant took Satender to Kadam Multi-Speciality Hospital where they both were admitted. Satender was later admitted in Narayana Hospital, Gurugram where he died on 27.04.2020

Initially, the case was registered under Section 323/506/34/379B IPC. After the death of Satender offence u/s 302 was added.

Ld. Counsel for the petitioner has argued that there is a delay of more than two days and seventeen hours in lodging the FIR. He further stated that after the alleged incident, the complainant Sikandar and deceased Satender were admitted in Kadam Hospital, Bhiwani, where, they informed the doctor that they had sustained injuries in a roadside accident. This was so recorded in their Bed-head tickets as well. They were also found to have consumed alcohol. The complainant Sikandar had specifically stated that he had sustained injuries due to his own mistake and does not want any police action. Similarly, Amit, the brother of deceased Satender had also stated that Satender had sustained injuries in a roadside accident and they did not want any police action. The medico- legal report dated 23.04.2020 issued by Narayana Multi-speciality Hospital, Gurugram also reveals that the deceased Satender was conscious and oriented as to time and place. He did not disclose that he had been assaulted as alleged in the FIR. Deceased Satender died on 27.04.2020. As per the hospital record it is only Ashok Bhardwaj,

the brother of the deceased who had informed the doctor that Satender had sustained injuries in an assault at Gaur Guest House. He further argued that from bare perusal of the FIR, no motive is revealed about the origin of the fight. No specific injury has been attributed to the petitioner on the person of the complainant or the deceased Satender. The main allegations are against co-accused Tony. The petitioner is in custody since 28.04.2020. Investigation is complete and the challan has already been filed.

As per the allegations in the FIR, deceased Satender had been beaten and caused injuries by all the accused including the petitioner. However, the specific injury on the head of the deceased with a baton after which he became unconscious has been attributed to Tony. As per the Post Mortem Report the cause of death was 'Head injury following ante mortem blunt force impact'. It has been stated in the report u/s 173 Cr.P.C. that the scene of the crime was inspected on 30.04.2020 and parcels of blood found from the spot were taken into police custody. Even the dusters used for wiping blood from the room have been recovered from the co-accused Prem. In the light of this, the argument of the petitioner that it was a case of Road Side Accident and not one of assault at Gaur Guest House is falsified. The batons allegedly used in the incident by the petitioner and his co-accused are also stated to have been recovered. Besides the share of the money snatched from the complainant and the deceased that fell to each accused has also been recovered. Rs.2000/- has been recovered from the petitioner.

According to the FIR after the deceased had become unconscious the petitioner and the other accused are alleged to have continued attacking Satender with baton, kicks and punches and caused lot

of injuries to him thereafter. The petitioner therefore cannot absolve himself of his culpability and he has to be imputed the common intention with the main accused Tony.

Accordingly this petition is dismissed at this stage.

May 13, 2021

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No