

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-2582-2022

Date of decision : 08.02.2022

Suresh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Kunal Dawar, Advocate
for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.235 dated 03.08.2020 registered under Sections 147, 148, 149, 323, 506 IPC (Sections 307, 325 IPC added later on) at Police Station Kherki Daula, Gurugram, Haryana.

Learned counsel for the petitioner has submitted that in the present case as per the complainant's version, there were three injured persons but the petitioner has been attributed only one injury inflicted upon the complainant Ram Babu allegedly given with a *gandasa*. It has further been submitted that as per the MLR dated 02.08.2020, the said injury is a lacerated wound which was caused by a blunt weapon. Reliance has been placed upon the opinion of the Board of Directors by counsel for the petitioner to state that as per the said Board of Directors, the declaration of the said injury to be “dangerous to life” by the private hospital has not been

given in accordance with law and the Board had considered it to be “potentially” dangerous to life injury.

Learned counsel for the petitioner has relied upon the judgment of the coordinate Bench of this Court in *Mohinder Singh and others vs. State of Punjab* reported as *2012(4) RCR (Criminal) 214* to contend that in such like situation, as in the present case, the injury would fall under Section 325 IPC and not under Section 307 IPC. It has further been submitted that in the present case, one person from the side of accused, i.e. Mahipal was also injured and reference has been made to the MLR dated 02.08.2020 (Annexure P-2) of the said Mahipal, who had suffered a lacerated wound of size 2.5 cm x 1 cm over right frontal region and for which the surgeon opinion was also sought. It is further submitted that even as per the complaint dated 03.08.2020 given by Mahipal, who is also an accused person, the name of the present petitioner had not been mentioned therein. It has further been submitted that the injured Ram Babu was discharged after a period of 8 days on 10.08.2020 from the hospital and is keeping in good health. It has also been argued that since only one injury has been attributed to the present petitioner, thus, the question as to whether the petitioner had any intention to cause an injury that could attract under Section 307 IPC, would also be a matter of trial. It has further been submitted that the petitioner has been in custody since 23.08.2020 and out of 16 prosecution witnesses, 13 witnesses are yet to be examined and thus, the trial is likely to take time. It has further been submitted that earlier application for regular bail was withdrawn on 14.09.2021 and substantial period of custody of more than 4 ½ months has been undergone by the petitioner since then and there are 13 more witnesses to be examined, and

the trial is likely to take time and the said period of custody, in the facts and circumstances of the present case, would constitute substantial change of circumstances so as to entitle the petitioner for regular bail.

Learned State counsel has opposed the petition for regular bail and has submitted that the injury inflicted by the petitioner was on the head of the complainant and it is with a *gandasa* and he along with other accused persons, had caused injuries to the three injured persons of the complainant party.

Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner has been attributed only one injury allegedly inflicted upon the complainant and all the other accused persons, who have been attributed injuries, have already been granted regular bail / anticipatory bail.

This Court has heard learned counsel for the parties and has perused the paper book.

It is not in dispute that although there are three injured belonging to the complainant party in the present case but the petitioner has been attributed one injury inflicted upon complainant Ram Babu. A perusal of the MLR of the complainant dated 02.08.2020 would show that the said injury is stated to have been caused with a blunt weapon. The opinion of the Board of Directors was taken in the present case on 22.08.2020, the relevant part of which is reproduced hereinbelow:-

“The board observes that Dr. Saroha was not clear about the weapon as to whether its blunt or sharp and gave a dubious/conflicting opinion earlier as any injury can be either blunt or sharp which can be distinguished on careful inspection. Further, the said MLR mentions all injuries to be by Blunt weapon only.

Dr. Saroha mentions, "Any injury which causes intracranial bleed/fracture skull is dangerous to life" is a generalized statement and to opine any injury as dangerous to life there must be a impact severe and deep enough to injure vital organs/functions (brain in this case), which is not evident from the discharge summaries as the GCS at time of admission was 15/15, i.e. E4V5M6, was conservatively, managed throughout, but the presence of intracranial bleed and its potential to cause a neurological complication later and become life threatening cannot be denied either, hence the board considers it to be a potentially dangerous to life injury.

<i>Sd/-</i>	<i>Sd/-</i>	<i>Sd/-</i>
<i>Dr. Deepak Mathur</i>	<i>Dr. Amandeep</i>	<i>Dr. Manav Chauhan</i>
<i>Forensic Spl.</i>	<i>Surgeon</i>	<i>Medical Officer</i>
<i>DCH, Gurugram</i>	<i>DCH, Gurugram</i>	<i>DCH, Gurugram</i>
<i>22.8.2020</i>	<i>22.8.20</i>	<i>22.8.20"</i>

A perusal of the above opinion would show that it has been observed therein that the opinion given by Dr.Arun Saroha was not clear regarding nature of weapon used, as to whether it was blunt or sharp and thus, the opinion given was dubious / conflicting. It has further been observed that the MLR (Annexure P-4) mentions that both the injuries had been inflicted using a blunt weapon and the Board had then considered the injury in question to be a “potentially” dangerous to life injury. A coordinate Bench of this Court in ***Mohinder Singh's*** case (supra) has observed as under:-

*“xxx xxx The distinction between the words “dangerous to life” and “endangering life” came to be determined by a Division Bench of this Court in **Atma Singh Versus The State of Punjab, 1982(2) CLR 496** and it was held as under:-*

“Held, that the expression 'dangerous' is an

adjective and the expression 'endanger' is verb. An injury which can put life in immediate danger of death would be an injury which can be termed as 'dangerous to life' and, therefore, when a doctor describes an injury as 'dangerous to life', he means an injury which endangers life in term of clause 8 of Section 320, Indian Penal Code, for, it describes the injury 'dangerous to life' only for the purpose of the said clause. He instead of using the expression that this was an injury which 'endangered life' described it as 'dangerous to life', meaning both the time the same thing”.

46. Likewise, this Court in **Tej Ram Versus The State of Punjab, 1978 (6) CLR, 76**, observed that injury described by the doctor as 'dangerous to life' and if not treated i.e. to say that but for timely and medical aid the injured was likely to die. Such type of injury/opinion are not the type of the injury as would attract the provisions of Section 307 IPC, which envisages an injury sufficient in the ordinary course of nature to cause death and such injury would fall within the ambit of clause Eighthly of Section 320 IPC and would be punishable under Section 326 IPC.

47. Similarly, this Court in case reported as **State of Punjab Versus Tara Singh, 1987(1) Recent Criminal Reports (Criminal) 184**, has observed that the opinion “possibility of injury No.1 on the person of injured being dangerous to life could not be ruled out”, in view of such opinion, charge under Section 307 IPC cannot be sustained.”

Further perusal of the opinion dated 22.08.2020 would show that the complainant Ram Babu was discharged from the hospital on 10.08.2020, i.e. after being admitted for 8 days. One Mahipal, who is also

(Annexure P-2). The said Mahipal had suffered a lacerated wound of size 2.5 cm x 1 cm over his right frontal region. As per the version given by the said Mahipal in the complaint dated 03.08.2020, the petitioner had not been mentioned in the same to be one of the persons, who had participated in the said incident. The petitioner has been in custody since 23.08.2020 and out of 16 prosecution witnesses, only three witnesses have been examined and thus, the trial is likely to take time moreso, in view of the present pandemic. The earlier bail petition of the petitioner was withdrawn on 14.09.2021 and since then, a further period of more than 4 ½ months has lapsed and keeping in view the facts and circumstances of the present case, the said period is a substantial period so as to entitle the present petitioner to file the present bail petition. The question as to whether, as per medical opinion, Section 307 IPC is attracted or not and also as to whether the petitioner who has been attributed only one injury, had necessary intention / knowledge so as to constitute an offence under Section 307 IPC, would be a matter of trial.

Keeping in view the above said facts and circumstances moreso, the petitioner has been in custody since 23.08.2020 and the trial is likely to take time, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

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 petition.

(VIKAS BAHL)
JUDGE

February 08, 2022

Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No