

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(212)

CRM No. M-3261 of 2022
Date of Decision : 01.02.2022

Lakhwinder Singh @ Shinda Singh

....Petitioner

Versus

State of Punjab

....Respondent

(through video conferencing)

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Harneet Singh Oberoi, Advocate for the petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in FIR No. 258 dated 17.10.2020, registered under Sections 302, 323, 34 IPC (Section 302 IPC added later on) at Police Station Sardulgarh, District Mansa.

Learned counsel for the petitioner argues that in the present case, Section 302 IPC was added in the supplementary challan whereas, the incident relates to a spontaneous fight between the neighbors. Learned counsel for the petitioner submits that the petitioner never knew about the head surgery, which the deceased had undertaken. Learned counsel further submits that co-accused, namely, Amrik Singh and Sona Singh against whom the similar allegations have been alleged, have already been extended

the benefit of regular bail by a co-ordinate bench of this Court while passing orders in CRM No. M-16730 of 2021 and CRM No. M-19726 of 2021 respectively dated 28.10.2021 hence, on the ground of parity as well, the petitioner may kindly be extended the benefit of regular bail.

Notice of motion.

Mr. Kirat Singh Sidhu, learned Deputy Advocate General, Punjab, who has joined the proceedings through video conference, keeping in view the service of advance copy of petition, accepts notice on behalf of the respondent-State.

Learned State counsel submits that the deceased has died due to the head injury though, it is a matter of fact that the deceased had undergone a head operation prior to the incident and he died after a period of three months of the incident. Learned State counsel further submits that Section 302 IPC was added after a period of three months of registration of the FIR on the basis of the supplementary challan and concedes the factum that co-accused, namely, Amrik Singh and Sona Singh, against whom similar allegations as alleged against the petitioner were alleged, have been extended the benefit of regular bail by the co-ordinate bench of this Court in CRM No. M-16730 of 2021 and CRM No. M-19726 of 2021 respectively.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

A co-ordinate bench has extended the benefit of regular bail to co-accused Amrik Singh as well as Sona Singh. The order passed by the co-ordinate Bench while extending the bail to co-accused Amrik Singh is as under :-

“The instant Petition has been filed under Section 439 of

the Code of Criminal Procedure seeking Regular Bail on behalf of the Petitioner in case FIR No.258, dated 17.10.2020, registered under Sections 324, 323, 34, 302 of the Indian Penal Code (Section 308 of the IPC added later on), at Police Station Sardulgarh, District Mansa.

2. Custody Certificate of the Petitioner filed on behalf of the State, today; Be kept on record.

3. The Petitioner has by now remained in detention for almost a year since 31.10.2020.

4. It has been contended on behalf of the Petitioner that the offence under Section 302 of the IPC was added three months after the original FIR was lodged, and that totality of the facts narrated in the FIR would not indicate any intention to kill the victim Budh Singh, who according to the Post Mortem conducted on the body on 14.01.2021 was found to have “Old Operated scar mark over both frontal region of skull on dissection Subcutaneous infiltration of blood present. On further Dissection craniectomy defect seen in both frontal region of skull.”

5. It is, thereafter, sought to be emphasized that even according to the opinion of the Autopsy Surgeon, “the cause of death is sequelae of head injury and its complications.....”, which is also mentioned in the Reply filed on behalf of the State.

6. Now, according to Ld. Counsel for the Petitioner, the FIR states that the occurrence had taken place due to a quarrel between neighbours in which the accused persons had allegedly assaulted the victim since their children had been stopped from playing outside in the street. There is no indication to the effect that the assault was necessarily with the intention to cause death of the victim since his Post Mortem indicated 'craniectomy defects' which denotes history of brain surgery some time in the past, which fact is not presumed to be within the knowledge of the attacker while assaulting the victim.

7. There appears to be merit in this submission raised on behalf of the Petitioner especially considering the fact that the death of the victim had taken place three months after the original date of occurrence and he was having a history of 'craniectomy defects'.

8. Trial in the case is yet to commence even the first witness from the Prosecution side has not yet been examined.

9. In the circumstances, this Court is of the opinion that further detention of the Petitioner, at this stage, for an indefinite period, is not called for. As such, he is ordered to be released on bail to the satisfaction of the Ld. Trial Court/Duty Magistrate Concerned.

10. Disposed off.”

Learned State counsel has conceded the factum that the allegations alleged against the petitioner and co-accused Sona Singh, who has been extended the concession of regular bail are similar in nature. No differentiating fact has been brought to the notice of this Court so as to deny the concession of regular bail to the petitioner, which has been extended to the similarly situated co-accused on the ground of parity. In the absence of any differentiating fact between the petitioner and co-accused Sona Singh, the petitioner has made out a case for the grant of regular bail on the ground of parity.

The petitioner is directed to be released on regular bail in this case subject to the satisfaction of the trial Court/Duty Magistrate concerned.

Learned counsel for the petitioner has undertaken before this Court that the petitioner will not influence the trial in any manner and will maintain good conduct, if he is granted bail. In case of default of the undertaking, the State will be at liberty to approach this Court for passing appropriate orders.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the case.

February 01, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? Yes
Whether reportable? No