

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-3957-2022 (O & M)****Date of decision: 18.05.2022**

Sonu @ Sonu Singh

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Karandeep S. Sidhu Advocate, for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)**CRM-17429-2022**

The application for placing on record translated copy of FIR No.140 (Annexure P-3 and photocopy of the MLR and opinion given by the department of general surgery (Annexure P-4) is allowed as prayed for. The aforesaid documents are taken on record. The Registry is directed to tag the same at the appropriate place of the paper-book.

CRM-M-3957-2022

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in a case FIR No.140 dated 17.08.2021 under Sections 307, 458, 323, 427, 148, 149 IPC and Section 325 and 201 IPC (added later on) registered with Police Station Guruharsahai, Distt. Ferozepur.

2. The brief facts of the case are that Surjeet Singh son of Krishan Singh got registered an FIR to the effect that four months ago, some

unknown persons had stolen their buffalo which they were investigating at

their own level. His family members doubted one Balkar Singh son of Sher Singh for having stolen said buffalo. A *panchayat* was convened because of which the family of Balkar Singh was upset and would often threaten the complainant's family. On 15.08.2021, Balkar Singh entered their house alongwith Sonu (the present petitioner) armed with an Iron rod, Monu armed with wooden stick, Raj alias Sonu armed with *kappa*, Lovepreet Singh @ Nikka armed with *kappa*, Jaswant Singh alias Keema armed with dang, Sajjan armed with stick, Didar Singh empty handed, Gurmeet Singh armed with stick, Gagandeep Singh and another armed with iron rod, Ramandeep Singh armed with punch, alongwith 4-5 unidentified persons with iron sticks and *kirpans*. Sonu son of Didar Singh (the present petitioner) with an intention to kill the complainant hit him with an iron rod on the center part of the head. The other persons also inflicted injuries on the person of the complainant. The FIR was registered on 17.08.2021 leading to the arrest of the petitioner and the subsequent investigation, culminating in a challan.

3. The learned counsel for the petitioner submits that undoubtedly, the petitioner has been attributed an injury on the head of the complainant, which as per the MLR (Annexure P-4) is injury No.3, which is reproduced as hereunder:-

“Injury No.3:- Lacerated wound of approximate 5x1 cm on scalp on frontal area”.

4. The learned counsel for the petitioner contends that based on the injuries suffered, the opinion of the doctor was obtained. On 20.11.2021, Dr. Diksha, Department of General Surgery, DMCH Ludhiana, gave a report whereby injury No.3 is stated to be “grievous which could be dangerous to

injury endangering the life, and therefore, punishable under Section 326 IPC. For an injury to be one under Section 307 IPC, the opinion must be to the effect that the injuries suffered by the injured were sufficient to cause death in the ordinary course of nature and that the injured would have died but for timely medical aid. However, no such opinion was obtained. He, thus, contends that the injury inflicted would at best be an injury attracting Section 326 IPC. He places reliance on the judgment passed in the case of **“Atma Singh versus The State of Punjab, 1982(2) CRL 496**, wherein this Court held as under:-

11. It appears that the doctors who had been conducting the medico legal examinations have been using the term 'dangerous to life' as synonymous with an injury which 'endangers life.' Even the Court at times have considered an injury described as dangerous to life as an injury envisaged in clause Eighthly of section 320 of the Indian Penal Code. In this regard reference can be made to Mohammad Rafi v. Emperor, AIR 1930 Lahore 305. In that case the injury was on the right side of the neck about 2½" x ¾" in dimension inflicted with a sharp edged weapon. The doctor had, in fact, in that case deposed that there was every possibility of the deceased surviving but for the wound becoming septic apparently as a result of it being pressed with hands and bandaged with dirty cloth in the initial stages before the deceased was taken to the hospital. The Court held that though a finding that the appellant knew that his act was likely to cause death, was not justified but at the same time, a wound on the neck, must at least be considered to be 'dangerous to life' within the meaning of Clause 8, Section 320 Indian Penal Code, and therefore, 'grievous'.

12. Palekar, J. too in Jai Narain Mishra and others v. State of Bihar, 1972 C.A.R. 19(S.C.), held, a penetrating wound 1¼" x ½" x chest wall deep on the right side of the chest caused with a bhala and described as 'dangerous to life', as grievous

injury and in the later part of paragraph 11 called this injury as one endangering life.

13. 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 terms 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 that the injury was 'dangerous to life', meaning both the time the same thing.

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17. We are of the view that the Court is not absolved of the responsibility while deciding a criminal case to form its own conclusion regarding the nature of the injury, Expert's opinion notwithstanding. The Court has to see the nature and dimension of the injury, its location and the damage that it has caused. Even when an injury is described as to be one which endangers the life the court has to apply its own mind and form its own opinion in regard to the nature of injury, having regard to the factors that should weigh with Court, already mentioned. We are also firmly of the view that wherever a doctor describes an injury as 'dangerous to life' and the nature of the injuries are such which could merit such a conclusion then such an injury has to be treated as 'grievous hurt' of the description mentioned in first portion of clause 8 of Section 320 of the Indian Penal Code.

18. For the reasons afore-mentioned, we acquit the appellant of the offence under section 307 of the Indian Penal Code and convert his conviction into one for an offence under section 326 of the Indian Penal Code and maintain the sentence awarded to him. In the result, the appeal stands disposed of accordingly”.

Similarly, reliance is placed on the judgment in **“Mohinder Singh and others versus State of Punjab, 2012(4) RCR (Criminal) 214**, wherein this Court held as under:-

“45. There is another aspect of the matter which can be viewed from a different angle. As per medical evidence, there was only one incised wound with sharp edged weapon on the person of PW3-Hamir Singh. This injury was kept under observation and X-Ray was advised. Subsequently, as per X-Ray report, there was a fracture of the left frontal bone on the person of PW3-Hamir Singh. In the wake of police request, PW1-Dr.Sat Pal gave his opinion on 10.04.1995 to the effect that as there was a fracture of the left frontal bone, so injury No. 1 could have proved dangerous to the life of the patient. But in the cross-examination, PW1 admitted that if there would have been no fracture on the skull, then the injury would not have been dangerous to life. He also admitted that unless the injury affects the brain and only bone is fractured (as in the present case), it cannot be termed as dangerous to life. It means, the words "dangerous to life" are equivalent to "endangering life" and such acts squarely covered within the ambit of clause Eighthly of Section 320 Indian Penal Code, which is punishable under Section 326 Indian Penal Code. 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 v. 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 v. 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 Indian Penal Code, 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 Indian Penal Code and would be punishable under Section 326 Indian Penal Code.

47. Similarly, this Court in case reported as State of Punjab v. 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 Indian Penal Code cannot be sustained.

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49. Thus, seen from any angle, in the given facts and circumstances of the instant case, to me, appellant-Mohinder Singh cannot possibly be held guilty of an attempt to murder with the offence prescribed under Section 307 Indian Penal Code and his co-appellants under Section 307/34 Indian Penal Code as well. The act of appellant-Mohinder Singh squarely falls within the ambit of clause Eighthly of Section 320 Indian Penal Code, which is punishable under Section 326 Indian Penal Code. To this extent, the trial Court appears to have gone legally wrong in this relevant behalf.

50. In the light of aforesaid reasons, appellant-Mohinder Singh is hereby acquitted of the charge framed against him under Section 307 Indian Penal Code. Be that as it may, he is held guilty and is hereby convicted under Section 326 Indian Penal Code. However, his conviction under Section 324/34 Indian Penal Code is maintained. Again, it is not a matter of dispute

that appellant-Mohinder Singh has already undergone rigorous imprisonment for a period of about five months. He has already suffered the agony of protracted trial for the last fifteen years, so in my view, ends of justice would be sub-served, if his sentence of imprisonment under Sections 326 and 324/34 Indian Penal Code is reduced to the period already undergone by him. I order accordingly.”

A similar view has been taken by this Court in various judgments passed in the cases of ***Ashok Kumar versus State of Haryana, Criminal Appeal No.908-SB of 2001 decided on 17.12.2012***, (ii) ***Narender Singh versus State of Haryana and others, 2020(3) RCR (Criminal) 66***, (iii) ***Mehmood Akhtar versus State of Punjab, 2014(16) RCR (Criminal) 43***, (iv) ***Suresh versus State of Haryana (CRM-M-2582-2022 decided on 08.02.2022)***,”

5. He also submits that the petitioner is in custody since 22.09.2021, the challan has been submitted on 21.12.2021 and none of the 14 witnesses cited in the list of prosecution witnesses has been examined so far.

6. The learned State counsel, on the other hand, contends that the petitioner is the main accused having caused the injury attracting Section 307 IPC. The complainant was severely beaten up and, therefore, the petitioner does not deserve the concession of bail. He, however, admits that the charges have not been framed as also the fact that the injured was discharged from the hospital in 4/5 days and he is currently in robust health.

7. I have heard the learned counsel for both the parties.

8. It would be a matter of adjudication during the course of trial as to whether the injury inflicted by the petitioner is, in fact, an injury

9. Be that as it may, the petitioner is in custody since 22.09.2021 and investigation stands completed. As many as 14 witnesses are yet to be examined and, thus, the trial is not likely to be concluded in the near future. There is one other FIR pending against the petitioner in which he is stated to be on bail.

10. In view of the aforesaid facts, the further incarceration of the petitioner is not required. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Sonu alias Sonu Singh, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

If any attempt whatsoever is made by the petitioner and/or his family members to contact/threaten/intimidate any of the witnesses of the present occurrence, the State shall be at liberty to move an application for cancellation of bail granted vide this order.

(JASJIT SINGH BEDI)
JUDGE

May 18, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No