

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-5697-2022 (O & M)

Date of decision: 04.04.2022

Vikas Kumar

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.N. Lohan, Advocate, for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Jatinder Kr. Sehrawat, Advocate, for the complainant.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition is for the grant of regular bail to the petitioner under Section 439 Cr.P.C. in a case bearing FIR No.850 dated 13.12.2021 under Sections 304 & 34 IPC registered with P.S. HTM, Hisar, District Hisar.

The FIR, in this case, was registered at the instance of Davender Kumar, who stated that he was told by his mother-Kamla Devi on 13.12.2021 that Naresh and Vikas have caught hold of the deceased-Gurdayal Singh and the petitioner-Vikas gave a forcible push to Gurdayal on which he fell down. He further stated that his brother-in-law Kulwant took his father to the doctor at CMC Hospital Hisar from where he was referred to Government Hospital where he was declared dead. He also stated that his father-Gurdayal was already having a blood pressure problem and was a heart patient, and that the death of his father took place on account

of falling on the road due to the push given by Naresh and Vikas, the present petitioner.

The learned counsel for the petitioner submits that no offence under Section 304/34 IPC is made out from the contents of the FIR. The Board of Doctors of the Civil Hospital, Hissar, have found no external injury marks on the person of the deceased-Gurdayal and observed that the deceased was suffering from multiple chronic ailments. He refers to the report in this regard (Annexure P-1). He further contends that as per post-mortem report (Annexure P-2) no injuries were found on the person of the deceased, and therefore, to know the cause of death the report of Histopathological examination and chemical examiner was awaited. He contended that the version of the complainant is amounting to hear-say evidence and Kamla, the mother of the complainant, has not been cited as a witness in the final report submitted by the police. He also referred to the statement of Satbir Singh, son of Sultan Singh, recorded under Section 161 Cr.P.C. wherein it is stated that the said witness was unaware about the push allegedly given by the petitioner and one Naresh. He relied upon the judgment passed by this Court in the case titled as '*Surat Singh and others versus State of Haryana and another, (CRM-M-5312-2015 decided on 22.03.2022)*'. He, thus, contended that the medical evidence, the ocular account do not affix the guilt of the petitioner, and thus, he was entitled to the concession of regular bail.

The learned counsel for the State while referring to the reply dated 22.03.2022 submits that all the co-accused of the petitioner were found

to be innocent. The petitioner himself had disclosed in his interrogation that he had pushed Gurdayal (since deceased) resulting in his fall on the road and subsequent death. He admitted that no recovery was effected from the petitioner and that there were no external marks of injury on the body of the deceased-Gurdayal. He also admitted that the mother of the complainant, Kamal was not cited as a prosecution witness in the list of witnesses annexed with the report under Section 173 Cr.P.C. He, however, adds that the petitioner was well aware of the age and ailments of the deceased, and therefore, he would be liable for the offence which was committed.

The learned counsel for the complainant has contended that as per his information, Kamla, wife of the deceased, has now been made a prosecution witness. He otherwise adopts the arguments of the learned State counsel.

I have heard the learned counsel for both the parties at length.

Admittedly, it is a case of no injury as per the medical report (Annexures P-1 and P-2). At this point of time, there is nothing to suggest that the petitioner was aware of the prior medical condition of the deceased taking the prosecution case against him to be true. It is also not in dispute that the petitioner has been in custody since 28.12.2021 and is a first time offence with no prior criminal record.

In a similar case titled as “*Surat Singh and others (supra)*”, this Court has observed as under:-

“12. Thus, it is apparent that not only did the deceased not receive any external injury or internal injury but that she was also an old case of anemia, which would have precipitated her death on account

of cardiogenic/neurogenic shock. Para 15 of the order dated 03.04.2013 (Annexure P-2) is reproduced below:-

15. Furthermore, as per the report under Section 173 of Code of Criminal Procedure the cause of death of Satwanti Devi has been disclosed to be "severe anemia" and she was undergoing treatment for the same as is evident from the bed head ticket dated 26.08.2010, 02.04.2011 and the instant incident has taken place on 2.5.2011 and not much time has lapsed between 2.4.2011 and 2.5.2011 and the possibility of death due to "severe anemia" cannot be ruled out when the disease of Satwanti Devi was continuing for such a long period of time."

The Hon'ble Allahabad High Court in "Sri Parkash Vs. The State, 1989(2) Crimes 379" in almost similar circumstances held as under:-

"15. Relying upon the evidence given by P.W. 2 Dr. M. Hussain, learned Sessions Judge has observed that the spleen on Bachu deceased was enlarged. Learned counsel for the revisionist has challenged the same and has on the other hand urged that there was no material on the record which may show that the spleen of Bachu was enlarged. In this respect it may be observed that Dr. M. Hussain P.W. 2 has stated in his evidence that whereas normal weight of the spleen of a boy is four ounces, the weight of the spleen in this case was six ounces. On the basis of the same the said doctor has stated that the spleen of Bachu was enlarged. The view expressed by P.W. 2 Dr. M. Hussain was not challenged by the prosecution before the trial Court and with regard to the same not a single question was put to the doctor by the prosecution by way of clarification or otherwise in our view there are other circumstances as well which tend to show that probably spleen of Bachu was enlarged. As observed by Sri N.J. Modi in Modi's Text Book of Medical Jurisprudence and Toxicology in his twentieth edition (page 288) on account of its situation, rupture of a normal spleen is very rare unless caused by considerable crushing and grinding force such as the

passing of a carriage or motor car over the body, or by a crush in a railway accident, or by a fall from a very great height; in such cases it is usually associated with injuries to other solid organs and to the ribs overlying the spleen. A normal spleen may sometimes be ruptured by the broken ends of a rib which may be fractured by a severe kick or by a blow from a blunt weapon. In our view the situation of a normal spleen in the body is so secure that normally, it is not ruptured unless there is crushing of the body or there has been a fall from very great height etc. In this case, on the other hand, we find that no serious injury was caused to Bachu so much so that I.O. at the time of preparing 'Photo Lash', and the doctor at the time of the post-mortem examination did not find any outward visible injury on the body. In our opinion had Bachu been given a severe beating either by kicks or elbows, he must have in normal course sustained some visible injury like contusion. The fact that Bachu had no visible injury on his body shows that he was not subjected to any severe beating. When this was so his spleen had the same been normal and not enlarged would not have been ruptured.

16. Learned counsel for the State, on the other hand has referred to us the evidence of P.W. Dr. Trilok Chand, who tried to depose that when Bachu was brought to him on 16-3-1976 he had observed some visible injury on his body. In our view the said evidence, which doctor gave from his memory after a lapse of more than a year could not be believed, firstly, because he did not make any note of same in his register and, secondly because both the I.O. at the time of the preparation of 'Photolash' and P.W. 2 M. Hussain, at the time of conducting post-mortem examination did not observe any visible injury on the dead body.

17. The fact remains that Bachu did not suffer any visible injury. This would have been possible only if he was not subjected to any severe beating by kicks and elbows as alleged

by the prosecution in our view when in absence of any such visible injury the spleen of Bachu was ruptured, the same shows that his spleen was enlarged as deposed by Dr. M. Hussain P.W. 2.

18. It is not the case of the prosecution that the fact that the spleen of Bachu was enlarged was known to the appellant. When this is so the appellant could not be said guilty under Section 304 Indian Penal Code Therefore this is not a case in which enhancement of punishment of the appellant is warranted. The revision is liable to be dismissed.

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23. Learned counsel for the appellant has urged before us that even if the appellant had beaten Bachu and caused injuries to him then the case which was made out against him was not a case under Section 325. Indian Penal Code but was a case under Section 323 Indian Penal Code This argument has got substance. It may be observed that Bachu had not sustained any visible injury. From the internal injuries sustained by Bachu. It is clear he has not suffered fracture etc. The injuries sustained were obviously simple. Therefore, the learned Sessions Judge has committed an error in holding that the appellant was guilty under Section 325 Indian Penal Code In our opinion the only offence which is made out against the appellant is the offence under Section 323 Indian Penal Code.”

13. The absence of any injury on the deceased shows that she was not subjected to any severe beating. When this was so, had she not had a pre- existing medical condition she in all probability would not have died.

14. It may also be relevant to mention here that there is not even a whisper in the report under Section 173 Cr.P.C. that any of the accused/petitioners, were aware of the pre-existing medical condition of the deceased at the time when the occurrence took place. The liability of an accused would arise for assaulting a person, who was

suffering from a disorder disease or bodily infirmity thereby accelerating the death of the other only if it could be said that the accused had the knowledge thereof as has already been submitted hereinabove. There is nothing to suggest that the accused persons were aware of the medical conditions of the deceased. Thus, an offence under Section 302/304 IPC cannot be made out.”

Keeping in view the aforementioned facts and the judgment passed in the case of ***Surat Singh (supra)*** , without going into the merits of the case, the present petition is allowed and the petitioner-Vikas Kumar is ordered to be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate, Hisar.

April 04, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

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