

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-03.02.2023

CRM-M-4576-2023

Sarabjit Singh @ Kala.

.....Petitioner.

Versus

The State of Punjab.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Lovish Rattan, Advocate for the Petitioner.

Mr. Shubham Kaushik, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.0173 dated 13.07.2021 under Sections 302/34 IPC registered at Police Station Chattiwind, District Amritsar Rural.

The brief facts of the case are that the statement of one Manjit Kaur wife of Jagir Singh was recorded to the effect that she had four children out of which one was Sandeep Singh @ Baba. On 12.07.2021 at about 4.00 pm when she was present at home she got to know that a fight had taken place between her son Sandeep Singh @ Baba and Mannu son of Dilbagh Singh, Gaggi son of Hardev Singh (since granted bail vide order dated 08.12.2022 in CRM-M-37808-2022), Kala son of Nimma (petitioner) and a few unidentified persons. When she reached near government hospital village Guru Wali then she saw the above persons along with 2/3

unidentified person beating her son Sandeep Singh. They were giving kick blows in the abdomen and groin of her son Sandeep Singh. On raising a noise the aforementioned persons fled away from the spot. She brought her son home. However, after sometime his health deteriorated and when arrangements were being made to take him to hospital at around 11.00 pm at night, her son Sandeep Singh died leading to the registration of the present FIR.

The learned Counsel for the petitioner contends that there is a substantial delay in the registration of the FIR. The complainant only made a complaint after her son had died. No specific role has been attributed to the petitioner and there are general allegations levelled against him and his co-accused. A perusal of the post mortem report of the deceased would reveal that there was one injury on the chest of the deceased. In fact taking the allegations to be true it was a sudden occurrence without any intention on the part of the petitioner which is apparent from the fact that none of the accused were armed. It appears that the occurrence took place at 4.00 pm on 12.07.2021. The deceased went to his house along with complainant and ultimately died at 11.00 pm in the night. Had he suffered serious injuries he would have definitely sought medical assistance. Thus it is his contention that taking the allegations to be correct, the case would be one under Section 304 IPC and not under Section 302 IPC. He further contends that the petitioner is in custody since 13.07.2021 and none of 18 prosecution witnesses have been examined so far. Therefore, as the trial of the present case was not likely to be concluded any time soon, the further incarceration of the petitioner was not required, more so when the petitioner himself was of the age of about 24 years and a first time offender. Even otherwise, a

similarly situated co-accused namely Ranjit Singh @ Gaggi has been granted the concession of bail vide order dated 08.12.2022 (Annexure P-4).

The learned Counsel for the State on the other hand contends that the accused brutally assaulted the deceased. He suffered injury “*11th Rib fractured on left side Hematoma present of size 2X1 CM in the Intercostal Space overlying Fractured Rib and Hemoperitoneum present around 2.5 Ltr of Blood present in Peritoneal Cavity. Hematoma of Size 22.5 X 14 CM present in Peritoneal Cavity.*” One injury i.e. lacerated wound of size 1.5 X 0.5 cm was found on the left side of the forehead over the left eyebrow on the medial end of the deceased. The cause of death was Hemorrhage shock sufficient to cause death in the ordinary course of nature. He contends that during the course of investigation the statements of other witnesses were recorded who have corroborated the allegations levelled against the petitioner by the complainant. He also refers to the motive for the occurrence which was that the deceased had been given beatings as he had not paid an amount of Rs.20/- to the accused for purchase of intoxicating tablets. He contends that the petitioner did not deserve the concession of bail looking at the manner in which the offence was committed. It is however admitted that a similarly situated co-accused has been granted the concession of bail.

I have heard learned Counsel for the parties at length.

A perusal of the FIR would reveal that no weapon of offence was being carried by any of the accused though all of them are said to have assaulted the deceased. It would be a matter of adjudication during trial as to whether an offence under Section 302 IPC or Section 304 IPC would be made out. At this stage the petitioner is in custody since 13.07.2021. None

of the 18 prosecution witnesses have been examined and the petitioner is a first time offender. He is of the age of 24 years and as such is a young boy. Therefore, the further incarceration of the petitioner is not required.

Thus, without commenting on the merits of the case, the petition is allowed and petitioner-**Sarabjit Singh @ Kala** son of Sh. Nirmal Singh is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime other than the present case.

If the petitioner or his family members/associates make any attempt to contact/threaten/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted vide this order.

In addition, the petitioner (or any one on their behalf) shall prepare a FDR in the sum of Rs.2,00,000/- each and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

Petitions stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

Feburary 03, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>