

232

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-10475-2023 (O&M)
Date of decision: 27.03.2023

BALKAR SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Navneet Jindal, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, A.A.G., Punjab.

HARSH BUNGER, J.

Petitioner (Balkar Singh) has filed this petition under section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No. 64 dated 16.08.2015, registered under Sections 323, 324, 326, 34, 307 (added later on by the trial Court) of Indian Penal Code, 1860, at Police Station City-2 Mansa, District Mansa, Punjab.

Succinctly, the abovesaid case FIR was registered on the statement of one Jasbir Singh son of Bhola Singh, who stated that on 12.08.2015 at about 6.30 PM, he was returning back under the bridge after having alcohol bottle in his possession, then Balkar Singh came to him with an unidentified person and Balkar Singh started talking to the complainant and unidentified person went away. It was stated that Balkar Singh demanded alcohol from the complainant and upon refusal, Balkar Singh started snatching the bottle and at that time one Sardar Singh was passing through, who after seeing them, came towards

them and then Balkar Singh suddenly hit the complainant with a small knife (*Kirch*) on the left side of his abdomen. Thereafter Balkar Singh picked up a small stone and hit it on the back side of the complainant's head. When the complainant raised an alarm then Balkar Singh ran away from the spot with *Kirch*. Then the father of the complainant came there and admitted the complainant to Government Hospital Bathinda.

After completion of investigation, challan was submitted and the petitioner was charge sheeted under Sections 323 and 326 IPC. Upon conclusion of trial, the trial Court after appreciating the evidence and material on record, convicted the petitioner under Section 323 and 326 IPC vide judgment of conviction dated 14.12.2016 and was accordingly sentenced to undergo rigorous imprisonment for 6 months under Section 323 IPC and rigorous imprisonment for 3 years under Section 326 IPC alongwith fine of Rs.1,000/- and in default of payment of fine, to further undergo imprisonment for 7 days vide order of sentence of the even date.

The petitioner challenged the aforesaid judgment of conviction and sentence dated 14.12.2016 by way of filing appeal; however the learned Sessions Judge, Mansa vide its order dated 13.09.2022 reversed the finding and sentence rendered by the trial Court and remanded the case to the trial court by observing as under:

“19. In these circumstances, this Court deems it fit to reverse the finding and the sentence rendered by the trial Court vide its judgment under appeal dated 14.12.2016 and thereafter, the case is remanded to the trial Court with the direction to the trial Court to re-examine Dr. Nishan Singh by recalling him under Section 311 of the Cr.P.C and seek his clear cut

opinion with respect to injury No.1. If need be the trial Court may also recall and re-examine Dr. Tarwinder Singh Nagpal.

20. After recalling and re-examining the doctors, the trial Court shall take into consideration their evidence in addition to the evidence already on the record and thereafter return a fresh finding/judgment. In this course if the trial Court feels that the nature of the injury was such that it was dangerous to life, and if the trial Court feels that the provisions of Section 307 of the IPC were attracted, the trial Court would be at liberty to consider the commitment of the case to the Court of Sessions. While taking all these steps the trial Court would be bound by the provisions and procedure of law.”

It appears that after remand of the case, the Court of Chief Judicial Magistrate, Mansa; upon re-examination of Dr. Nishan Singh and Dr. Tarwinder Singh Nagpal, was of the opinion that a *prima facie* case / offence under Section 307 is made out, accordingly, the petitioner was arrested and is in custody since then and the case was committed to the Court of Sessions Judge, Mansa.

The petitioner is stated to have challenged the abovesaid order dated 13.09.2022 passed by learned Sessions Judge, Mansa by way of ***Criminal Revision bearing No.CRR-24-2023***, wherein the following order was passed on ***09.01.2023***:-

“xxx xxx xxx

Main case

The petitioner has impugned the order dated 13.09.2022 vide which learned appellate Court has remanded the case for de novo trial.

Counsel for the petitioner has submitted that the petitioner was convicted by the trial Court vide order dated 14.12.2016 which was assailed by him by way of filing appeal. He submits that the learned appellate Court without adverting to the law settled has remanded the case for de novo trial. He submits that if at all there was any infirmity in the case of prosecution, the petitioner should have been acquitted by the trial Court or in case of finding the case of prosecution having been proved beyond reasonable doubt, he would have been convicted. However, the learned appellate Court did not appreciate the same and against the spirit of the law settled, has illegally remanded the case for de novo trial and thus, impugned order deserves to be set aside.

Notice of motion for 27.03.2023.

In the meantime, trial Court is directed to adjourn the case beyond the date fixed before this Court.”

Thereafter, the petitioner applied for regular bail, however the same was dismissed vide order dated 13.02.2023 passed by the Court of learned Additional Sessions Judge, Mansa. Hence, the petitioner has filed present petition before this Court seeking regular bail.

Upon issuance of notice in this petition, a status report by way of an affidavit of Sh. Sanjeev Goyal, PPS, Deputy Superintendent of Police, Sub Division Mansa, District Mansa, was filed on behalf of State of Punjab, which is already on record.

Custody certificate dated 26.03.2023 of the petitioner has been filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in this case. It is submitted that the petitioner has been facing this litigation since 2015. It is further submitted that the petitioner has been in custody for more than 07 months and is not involved in any other case / FIR. It is also submitted that in fact the trial was concluded with the conviction of petitioner, however on appeal filed by petitioner, the matter was remanded to trial Court vide order dated 13.09.2022 and presently the matter stands committed to Court of Sessions Judge, Mansa and charges have been framed against the petitioner and now the case is fixed for prosecution evidence. Learned counsel for the petitioner submits that order dated 13.09.2022 whereby the matter was remanded, has already been challenged before this Court vide **CRR-24-2023** wherein the trial Court has been directed to adjourn the case beyond the date fixed by this Court. It is thus submitted that the trial is likely to take time and no useful purpose would be served by keeping the petitioner behind the bars. Learned counsel for the petitioner submits that petitioner is ready to abide by any condition to be imposed by this Court or by the trial Court; accordingly, prayer for grant of regular bail is made.

Per contra, learned State Counsel has opposed the prayer of petitioner for grant of regular bail on the ground of seriousness of the offence; however, learned State Counsel does not dispute the custody period of the petitioner. Learned State counsel has also not disputed the fact that upon remand, the matter stands committed to Court of Sessions, Mansa and charges have been framed against the petitioner and now the case is fixed for prosecution evidence. It is further not disputed that the

remand order dated 13.09.2022 has been challenged before this Court vide **CRR-24-2023** wherein the trial Court has been directed to adjourn the case beyond the date fixed by this Court. It is also not disputed that there is no other case / FIR against the petitioner.

I have heard learned counsel for the petitioner as well as the learned State counsel, besides going through the paperbook and also the status report and custody certificate submitted on behalf of the State of Punjab.

In this case, the petitioner has been in custody for more than 07 months. Concededly, the trial was earlier concluded with the conviction of petitioner, however on appeal filed by petitioner, the matter was remanded to trial Court vide order dated 13.09.2022 who upon re-examination of Dr. Nishan Singh and Dr. Talwinder Singh Nagpal, added Section 307 of the Indian Penal Code in the matter and committed the case to Court of Sessions Judge, Mansa for trial; where charges have already been framed against the petitioner and the case is fixed for prosecution evidence. Further, the order dated 13.09.2022 whereby the matter was remanded, has already been challenged before this Court vide **CRR-24-2023** wherein the trial Court has been directed to adjourn the case beyond the date fixed by this Court. There is no other case / FIR against the petitioner. The trial is likely to take some time and no useful purpose would be served by keeping the petitioner behind the bars.

Keeping in view the aforementioned circumstances, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned.

However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of this case and any change in the address shall also be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity.

In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs. 50,000/- and deposit the same with the trial Court. The same would be liable to be forfeited as per law, in case of absence of the petitioner from trial without sufficient cause.

Nothing expressed herein above shall be construed to be an observation on the merits of the case and facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

The petition is accordingly disposed of.

March 27, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No