

248 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-685-2023 (O&M)
Decided on : 04.10.2023

Sarabjit Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Amitoj S. Dhaliwal, Advocate
for the petitioner.

Mr. Pankaj Khullar, AAG, Haryana.

Mr. Veneet Sharma, Advocate
for the complainant.

Manjari Nehru Kaul, J.(Oral)

CRM-41663-2023

Application is allowed as prayed for and Document (Annexure P-3) i.e. supplementary challan under Section 173(8) Cr.PC dated 18.04.2023 is taken on record subject to all just exceptions.

Main case

The petitioner is impugning order dated 07.02.2023 passed by learned Addl. Sessions Judge, Amritsar in case FIR No.202 dated 14.10.2022 under Sections 307, 148, 149 IPC and Sections 25, 27, 54, 59 of Arms Act (Section 302 IPC added later on) registered at Police Station Lopoke District Amritsar Rural whereby his application for default bail under Section 167(2) Cr.PC was dismissed.

2. It would be relevant to reproduce the FIR in question (Anneuxre P-1), which reads as under:

“Statement of Jaspal Singh s/o S. Narinder Singh resident of Deshmesh Nagar, Tehsil Lopoke (Ajnala) District Arimitsar Rural, aged around 30 years, Mobile No.9872498585, stated that I am the resident of abovesaid address and do the work of agriculture. We are three brothers and sister. I am the eldest and younger to me is my sister Lakhwinder Kaur, who is married. Youngest of all is brother Gurjeet Singh. My father had already expired 8 years back. Today on, 14.10.2022, I had come to village Lodhigujjar in order to meet the son of my Bhua namely Hardeep Singh s/o S. Darshan Singh, resident of village Lodhigujjar. Thereafter, I along with the son of my Bhua namely Hardeep Singh had started from house towards Chogawan town for bringing ration. Hardeep Singh was on his Aactiva and I was on my motorcycle and were coming towards town Chogawan. The son of my bhua Hardeep Singh, was 50 meters ahead of me. At about 3:45 pm, when we reached in front of gate of Baba Bhai Hardas Singh Gurdwara Sahib in the area of Lopoke, then from the front side, one Bolero vehicle bearing No.PB-02-CC-0052, which was being driven by Jatinder Singh son of S.Savinder Singh presently resident of village Lodhigujjar, they brought the vehicle in front of the son of my bhua namely Hardeep Singh and stopped there. Out of the vehicle, Sarabjit Singh son of Savinder Singh, resident of Lodhigujjar, armed with 315 bore rifle, Sukhchain Singh son of Mukhtar Singh resident of Hetampura armed with 12 bore gun, Gurpreet Singh son of S.Major Singh armed with baseball bat, Daler Singh son of Pratap Singh resident of Manj armed with datar came out. Sukhchain Singh raised a lalkara that today he should be taught a lesson regarding old enemy. Upon this, Jatinder Singh and Daler Singh

threw Hardeep Singh from his Activa. Sarabjit Singh son of Savinder Singh, resident of village Lodhigujjar fired towards Hardeep Singh with his 315 bore with an intention to kill and the same went through his right side of the abdomen. I raised an alarm of “Maar Ditta, Maar Ditta”. Then upon seeking the passersby gathering there, the assailants, while raising lalkara, ran away on their abovesaid vehicle from the spot. In the meantime, Gurjit Singh son of Mahinder Singh resident of Kakkar also came on the spot. Thereafter, I along with Gurjit Singh arranged for a vehicle and got Hardeep Singh admitted at Escort Hospital, Verka Bypass, Amritsar, where he is undergoing treatment. My brother Iqbal Singh also reached the Escort Hospital after hearing about this incident. That I along with Iqbal Singh were going to police station to inform you but you met us at the Bust Stand, Kohali. Legal action may be taken against the persons namely Jatinder Singh, Sarabjit Singh, Sukhchain Singh, Gurpreet Singh and Daler Singh.”

As injured Hardeep Singh died on 16.10.2022, offence under Section 302 IPC was added in the FIR by the police.

3. **Submissions of learned counsel for the petitioner**

- (i) Learned counsel for the petitioner submits that the petitioner was arrested on 17.10.2022. However, when the challan was presented before the Trial Court under Section 173 Cr.PC, the FSL/ ballistic report was not made a part of it.
- (ii) Learned counsel has argued that since the ballistic report was not part of the challan, the investigation in the case in

hand was still incomplete, however, the prosecution in a tearing hurry still presented the challan so as to thwart the petitioner from being granted bail under Section 167(2) Cr.PC as the investigating agency was conscious that the statutory period of 90 days to present the challan, was to expire soon.

- (iii) Learned counsel has further submitted that non-filing of the ballistic report along with the challan, was erroneously not appreciated by the Trial Court by ignoring that it was the most crucial piece of evidence to link the petitioner with the alleged murder of Hardeep Singh more so, since it was being projected by the prosecution that the deceased had succumbed to fire arm injuries.
- (iv) Learned counsel has thus, vehemently asserted that in the above facts and circumstances, the indefeasible right of the petitioner to be enlarged on default bail under Section 167(2) Cr.PC had accrued, and thus, he deserved to be granted bail.

4. **Submissions of learned counsel for the respondent-State**

- (i) Learned counsel for the State assisted by counsel for the complainant has vehemently opposed the prayer and submissions made by the counsel opposite by asserting that since it is a case of eyewitness account, non-filing of

ballistic report along with the challan, would be inconsequential.

- (ii) It has been further submitted that once the challan has been presented within the statutory period of 90 days, mere non-filing of the ballistic report, which was still awaited at that point of time, would not enure to the benefit of the petitioner for the purpose of being enlarged on default bail.

5. Heard learned counsel for the parties and perused the relevant material on record.

6. It is not in dispute rather it is a matter of record that the chargesheet was indeed presented by the investigating agency within the statutory period of 90 days. The relevant question, which arises for the consideration of this Court is as to whether in the facts and circumstances of the present case the investigation carried out by the investigating agency would be deemed to be incomplete on account of the ballistic report not being part of the challan. The answer to this is a big 'No' for the reasons to follow:

7. A chargesheet/challan is presented after completion of investigation and after the investigating officer has gathered enough evidence to prosecute the accused for the offences alleged. Expert opinions like FSL report or any other scientific examination, only serve to support the evidence collected by the investigating agency. An accused can be convicted based on the testimony of the eyewitness or the victim, as the case may be, and any scientific evidence, received subsequent to the presentation of the challan in a

case resting on the eyewitness account, would be a supplementary document, just supplementing the initial investigation carried out.

8. Adverting to the case in hand, the investigation against the accused-petitioner was complete when the initial report under Section 173 Cr.PC was presented before the Court concerned, specifically, with regard to the offences alleged against him in the FIR in question. *Prima facie*, there was ample evidence on record qua the alleged role played by the accused-petitioner in the murder of Hardeep Singh, including the statement of the alleged eyewitnesses, in addition to the other material evidence that was collected and documented by the investigating agency.

9. At the cost of repetition, it needs to be emphasized that since the case of the prosecution rests on eyewitness account, the ballistic report, even if received subsequently, would not be a ground to entitle the petitioner for being extended the concession of default bail, since it would only serve as an additional piece of corroborative evidence under Section 173(8) Cr.PC. No doubt, the ballistic report would be a relevant piece of evidence in the case in hand, but it certainly would not be the only crucial piece of evidence to nail the petitioner's participation in the crime in question.

10. Coming to the contention of learned counsel for the petitioner that the prosecution had not moved any application before the trial Court seeking extension of time for filing the ballistic report, is completely devoid of any merit. A perusal of the provisions of Section 167(2) Cr.PC leave no manner of doubt that it is nowhere contemplated therein that in case the ballistic report/FSL report has not been received or filed along with the

challan, the prosecution shall have to move an application before the trial Court seeking extension of time or permission to file the said report subsequently or in case, the FSL/ballistic report is not annexed with the challan, it would be deemed to be an incomplete challan, entitling the accused-petitioner to the concession of default bail under Section 167(2) Cr.PC.

11. The present petition, in the light of the above discussion, is devoid of merit and deserves to be dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

04.10.2023

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No