

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17431-2023

DATE OF DECISION: MAY 2, 2023

SURINDER KUMAR DHIMAN

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA.

PRESENT: MR. GAUTAM BHARDWAJ, ADVOCATE
FOR THE PETITIONER.

MR. BHUPENDER SINGH, DAG, HARYANA.

DEEPAK MANCHANDA, J.(ORAL)

This petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.50 dated 17.2.2023, under Section 452, 302 IPC, Police Station Barara, District Ambala.

As per the allegations levelled in the FIR, on 17.2.2023, Veena Rani, wife of Hem Raj gave a statement before the police that on 16.2.2023, she and her husband, namely, Hemraj (deceased) went to attend a marriage ceremony in village Fatehgarh Tumbi and on return, they visited their new house which was being constructed at village Ugala. At about 7.00 p.m., when they were having a look at their house, the petitioner whose house was adjacent to theirs started abusing them and entered into their house and asked them to stop the construction work. When the petitioner was asked not to hurl abuses, then he manhandled her husband and insisted that he won't allow the construction any further. The petitioner gave fist blows to the chest and abdomen of the her husband and pushed him as a result of

which he fell down and became unconscious. The complainant called her brother-in-law Naveen, who alongwith other persons of the locality came and took her husband to their house and a Doctor was called. On finding the condition of her husband 'serious', the Doctor advised to take him to hospital and accordingly, he was shifted to Sidharth Hospital, Shahbad where he was declared 'dead'. On these broad allegations, the present FIR was registered.

Learned counsel for the petitioner contends that the a false case has been foisted upon the petitioner as there was a party faction in the village. Learned counsel submits that the petitioner filed a civil suit titled '*Surinder Kumar vs. Balwinder and others*' at District Courts Ambala and the complainant party colluded with the other party in the civil suit and the present FIR is nothing but a counter-blast to pressurize the petitioner to withdraw his civil case. He further submits that Hem Raj (deceased) started construction of his house adjacent to his house and intended to place lintel on the wall of the house of the petitioner against which the petitioner also filed a civil suit titled as '*Surinder Kumar vs. Hem Raj*' pending at District Courts at Ambala. Learned counsel further contends that as per the case of the prosecution, the alleged incident occurred at 7.00 p.m. on 16.2.2023, whereas, the petitioner was not present on the said time of occurrence and was out of station at Utrakhnad and on coming back to his home, he came to know that Hem Raj died of heart attack at 4.00/5.00 p.m. Learned counsel submits that the petitioner has died a natural death whereas, a concocted story has been made with an intention to falsely involve the petitioner in the said incident and in this regard, a number of representations have also been sent to the various Authorities vide Annexure P-2 (Colly)..

Learned counsel further contends that there is delay of 1 day in lodging the FIR.

Notice of motion was issued on 13.3.2023 and learned counsel for the State sought time to file reply/status report.

Learned counsel for the State has filed reply by way of affidavit of Anil Kumar, Deputy Superintendent of Police, Barara alongwith Post Mortem Report (Annexure R-1), as per which, the cause of death has been mentioned as '*Shock and haemorrhage as a result of injury No.1 which is antemortem in nature and is sufficient to cause death in ordinary course of nature*'. Learned State counsel submits that as per the reply, the petitioner is also involved in two other criminal cases. Learned State has strongly opposed the prayer made by the petitioner and submits that the petitioner has committed a grave offence and has been specifically named in the FIR and his custodial interrogation is very much necessary and prays that the petition deserves to be dismissed.

Heard learned counsel for the petitioner as well as learned counsel for the State.

The complainant in the present FIR is none other than, but the wife of deceased Hem Raj who has clearly stated that on 16.2.2023, when she and her husband visited to their under construction house, the petitioner came there and hurled abuses and gave fist blows and pushed her husband, due to which her husband fell down and became unconscious. As per the contention raised by learned counsel for the petitioner, it is an admitted fact that the petitioner was neighbour of the deceased and there was a dispute in-between them with regard to construction of house by the deceased, and the

petitioner filed a civil suit titled as '*Surinder Kumar vs. Hem Raj*' which was pending litigation. Therefore, it cannot be said that the petitioner had no motive to commit the crime.

Another contention raised by learned counsel for petitioner is that the petitioner was not present at the spot. As per the statement of the complainant, there was no one else at the spot except she herself, her husband and the petitioner. She has specifically stated that it was only the petitioner who gave fist blows to her husband and pushed him due to which her husband fell down and became unconscious. As per Post Mortem Report (Annexure R-1) filed by the State, the injuries received by deceased Hem Raj is as under:-

- “1. Diffuse swelling 8cm x 7cm present over the left side of the chest above left nipple. On dissection there is fracture of underneath 3rd rib haematoma present around it. On further dissection, left lung and heart lacerated anteriorly. About 1000cc of fluid and clotted blood present in the left pleural cavity.
2. Two reddish brown abrasions 1.5cm x 0.5cm and 1cm x 0.5cm present over the right side of the neck below right ear.”

As per the Post Mortem Report (Annexure R-1), the cause of death was '*Shock and haemorrhage as a result of injury No.1 which is antemortem in nature and is sufficient to cause death in ordinary course of nature*'. Therefore, the statement of the complainant finds corroboration with the medical evidence placed on record by the State and it cannot be said the petitioner was not present at the spot and gave injuries to the deceased. Moreover, the presence of the petitioner on the spot would be a

question of trial. *Prima facie*, the circumstances reveal that the petitioner was present at the spot.

As regards the delay part, the argument of learned counsel for the petitioner that the same has been lodged at a belated stage has no legs to stand. The incident is stated to have occurred on 16.2.2023, late in the evening and the information was received by the Police Station at 11.30 a.m. on the very next day, i.e. 17.2.2023, and the FIR was registered at 1.29 p.m. on the very same date. As the husband of the complainant fell unconscious, immediate first aid was the only option available with the complainant and she has averred in her statement before the Police that firstly the deceased was taken to home and a Doctor was called and finding his condition to be serious, he advised to take him to the hospital and on reaching Sidharth Hospital, Shahabad, he was declared 'dead'. In these circumstances, it cannot be expected from a family member, that too a wife, to firstly visit the Police Station and make a statement and thereafter to attend to her deceased husband. This Court is of the view that the registration of FIR was instant.

In view of the above discussion, this Court is of the considered view that the petitioner does not deserve the concession of pre-arrest bail.

Petition is dismissed.

May 2, 2023
Gulati

(DEEPAK MANCHANDA)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No