

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

CRA-S No.1633 of 2023

Date of decision: 28th July, 2023

Surinder Kumar

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rahul Rathore, Advocate for the appellant.

Ms. Jasleen Chahal, Asst. Advocate General, Haryana
for the respondent.

Mr. Tribhawan Singla, Advocate for the complainant.

MANJARI NEHRU KAUL, J.

1. The appellant is challenging the order dated 15.04.2023 passed by learned Additional Sessions Judge, Karnal whereby his application seeking the concession of bail under Section 439 Cr.P.C. in case FIR No.814 dated 10.10.2022 under Sections 302, 34 IPC and Section 3(ii)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station Civil Lines, District Karnal has been dismissed.

2. In compliance of order dated 06.07.2023, learned State counsel has filed a copy of the post mortem report of the deceased, which is taken on record subject to just exceptions. A perusal of the said report reveals that the following injuries were found on the person of the deceased:

(1) *“A firm swelling of size 6 cm x 6 cm was present over the left occipital region of scalp on dissection*

of scalp and reflection of scalp underlying subgaleal hematoma was present at the corresponding site.

- (2) A linear reddish brown contusion of size 10 cm x 3.5 cm was present over the left scapular region situated 4 cm away from mid line, On dissection underlying muscles and tissues were found infiltrated with blood.*
- (3) A linear reddish brown contusion of size 6 cm x 3 cm was present over the left arm situated 12 cm below shoulder blade. On dissection underlying muscles and tissues were found infiltrated with blood.*
- (4) A linear reddish brown contusion of size 16 cm x 2 cm situated obliquely was present over the left side of middle back. On dissection underlying muscles and tissues were found infiltrated with blood.*
- (5) A linear reddish brown contusion of size 10 cm x 2 cm lying obliquely was present over the left side of middle back situated 2 cm below injury No.4. On dissection underlying muscles and tissues were found infiltrated with blood.*
- (6) One linear reddish tram track like contusion of size 12 cm x 2 cm was present on the lower back on left side. On dissection underlying muscles and tissues were infiltrated with blood.*
- (7) One reddish diffuse contusion of size 6 x 6 cm was present over the back in midline at the level of lumbar vertebrae. On dissection underlying*

muscles and tissues were found infiltrated with blood and underlying bone was found intact.

- (8) A diffuse reddish contusion of size 10 cm x 4 cm was present over the right side of middle back. On dissection underlying muscles and tissues were infiltrated with blood.*
- (9) One linear reddish blue contusion of size 15 cm x 5 cm was present over the upper border of right buttock region. On dissection underlying muscles and tissues were infiltrated with blood.*
- (10) One linear reddish blue contusion of size 8 cm x 4 cm was present over the upper border of left buttock region. On dissection underlying muscles and tissues were infiltrated with blood.*
- (11) Another diffuse reddish blue contusion of size 14 cm x 5 cm was present over the middle of right buttock region situated 6 cm below sacral spine. On dissection underlying muscles and tissues were infiltrated with blood.*
- (12) One diffuse reddish blue contusion of size 24 cm x 8 cm was present over the posterior aspect of right thigh. On dissection underlying muscles and tissues were infiltrated with blood.*
- (13) One linear reddish blue tram track like contusion of size 12 cm x 4 cm lying obliquely was present over posterior aspect of right thigh below injury No.12. On dissection underlying muscles and tissues were infiltrated with blood.*
- (14) One diffuse reddish blue contusion of size 23 cm x 13 cm was present over the posterior aspect of left*

thigh region. On dissection underlying muscles and tissues were infiltrated with blood.

- (15) One diffuse reddish contusion of size 10 cm x 5 cm was present over left popliteal fossa. On dissection underlying muscles and tissues were infiltrated with blood.*
- (16) One diffuse reddish blue contusion of size 11 cm x 4 cm was present over the posterior aspect of left leg 7 cm below popliteal fossa. On dissection underlying muscles and tissues were infiltrated with blood.*
- (17) One diffuse reddish blue contusion of size 13 cm x 6 cm was present over the right leg on posterior aspect just below popliteal fossa. On dissection underlying muscles and tissues were infiltrated with blood.*
- (18) One diffuse reddish blue contusion of size 12 cm x 6 cm was present over the posterior aspect of right leg 15 cm below popliteal fossa. On dissection underlying muscles and tissues were infiltrated with blood.*
- (19) A reddish abrasion of size 2 x 2 cm was present over the left forearm on lateral aspect.*
- (20) One linear reddish blue contusion of size 9 cm x 5 cm was present over the left forearm on lateral aspect. On dissection underlying muscles and tissues were infiltrated with blood.*
- (21) One linear reddish blue contusion of size 10 cm x 5 cm was present over the left forearm on lateral aspect below injury No.20. On dissection*

underlying muscles and tissues were infiltrated with blood.

(22) One linear reddish blue contusion of size 4 cm x 2 cm was present over the right hand on dorsal aspect. On dissection underlying muscles and tissues were infiltrated with blood and underlying bones were found intact.

(23) Two linear reddish blue contusion of size 3 cm x 2 cm lying parallel was present over the right forearm on lateral aspect. On dissection underlying muscles and tissues were infiltrated with blood.

(24) On dissection heart chambers were found empty, on dissection sub endocardial bleeding was present.”

3. As per the post mortem report, the cause of death of the deceased was opined to be hemorrhage and shock as a result of the injuries suffered.

4. Learned counsel appearing for the appellant has argued that the deceased was married to the daughter of the appellant on 03.08.2022. However, due to some acrimony between the spouses, daughter of the appellant i.e. wife of the deceased, had returned to her parental home. An FIR No.196 was thereafter lodged at the instance of the appellant's daughter under Section 498-A IPC against the deceased. The deceased, after the registration of the above mentioned case against him, had been continuously coming to the house of the appellant and creating a nuisance, and on a couple of occasions had even assaulted

the daughter of the appellant. Resultantly, on the date of alleged occurrence, i.e. the intervening night of 9th and 10th of October, 2022, the appellant sought the help of police by dialing 112 since the deceased was yet again indulging in unruly behavior outside their house. After the police came to the spot, they took the deceased away from their house. Before being taken in police custody, the deceased was medico legally examined, wherein only one simple injury was found on his person. In support, learned counsel has drawn the attention of this Court to (Annexure P-5), wherein the following injury was found on the person of the deceased:

“Linear abrasal (sic) of 5.2 8x2 cm on right hand multiple bruise of different size and shape on both buttocks Reddish. bruise of size of size 4cm x 1 cm on left forearm. Multiple bruise of different size and shape on both of hands.”

5. It has been argued by the learned counsel for the appellant that the doctor at the time of examining the deceased, had categorically given an opinion that all his vital parts were stable, though, he was under the influence of alcohol. It has been further argued by the learned counsel that after being taken away from the spot, i.e. after 8-9 hours, the deceased purportedly developed some health issues while in custody, as a result of which he was removed to Govt. Hospital, Karnal. As per medical reports of the hospital, he was brought dead to the hospital at about 3:37 a.m. Learned counsel has therefore, vehemently

asserted that once no injuries other than the one mentioned in Annexure P-5 were found on the person of the deceased, the appellant could not be even remotely linked to the death of the deceased. He submits that on the face of it, either it was a case of natural death, or a case of custodial death.

6. Vide order dated 18.07.2023, the complainant was ordered to be impleaded as respondent No.2. Mr. Tribhawan Singla, Advocate puts in appearance and files his power of attorney on behalf of the complainant/respondent No.2 to assist the State.

7. Learned State counsel assisted by the learned counsel for the complainant, while opposing and controverting the submissions made by the counsel opposite, has submitted that on 09.10.2022 the accused along with his other family members, had assaulted the deceased. It has not been disputed that pursuant to a phone call received by the police from the appellant, the deceased was arrested from outside the house of the appellant. Learned State counsel submits that the police at the time of arrest of the deceased, did notice some injury marks on his person, however, he was unable to dispute the contents of the MLR (Annexure P-5) of the deceased. He has however, submitted that the deceased sustained several injuries and bruises on his person which led to some health problems. On being taken to the hospital by the police, he was declared brought dead. Therefore, it was evident that the deceased had died on account of the injuries inflicted upon him by

all the accused including the appellant. Learned State counsel has not disputed that nature and number of injuries in the post mortem report are much more than the ones which find reflected in the MLR (Annexure P-5) of the deceased.

8. I have heard learned counsel for the parties and perused the relevant material on record.

9. The charges stand framed in the instant case. After the charges were framed, none of the 22 prosecution witnesses cited, have been examined till date. The appellant has now been in custody since 12.10.2022. Hence, there is no likelihood of the trial concluding in the future. In the facts and circumstances as enumerated hereinabove, this Court thus deems it fit to extend the concession of bail to the appellant. The appeal as such is allowed and the appellant is admitted to bail to the satisfaction of the trial Court/Duty Magistrate. 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

July 28, 2023
rps

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