

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-33866-2022

Date of Decision: .5.2023

Balwinder Singh @ Balwant Singh @ Bau

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Jasdeep Singh Gill, Advocate, for the petitioner.

Mr. Sanish Girdhar, AAG, Punjab.

Mr. Gagandeep Singh, Advocate, for the complainant.

KARAMJIT SINGH, J.

Prayer in the present petition under Section 439 of Code of Criminal Procedure is for grant of regular bail to the petitioner in case FIR No.14 dated 18.2.2022 registered for the offences punishable under Sections 302, 323, 148, 149, 201 IPC at Police Station Ghanie Ke Bangar, Police District Batala.

2. As per allegations recorded in the FIR, at the time of the occurrence, complainant-Gurwant Singh accompanied by his sons Manjit Singh and Karambir Singh alias Nikku (deceased) and one Sukhwant Singh was canvassing for votes in connection with assembly elections. At about 5:30 p.m., when they reached near Punjab and Sind Bank in their village, accused Tejinder Pal Singh along with the petitioner and their accomplices were already present there armed with different weapons. At that time, petitioner-Balwinder Singh @ Balwant Singh @ Bau was armed with handle of spade while Jaswant Singh was armed with wooden *sota*, Darshan Singh was armed with wooden handle of spade and main accused Tejinder

Pal Singh was having wooden log; that on seeing the complainant party, all the accused came forward and then petitioner-Balwinder Singh @ Balwant Singh @ Bau, Jaswant Singh, co-accused/Amar Singh, and Gurbinder Singh raised *lalkara* that they be not spared and immediately, co-accused Mukhtiar Singh pulled out Karambir Singh alias Nikku who was sitting in the car and co-accused Tejinder Pal Singh gave blow of wooden log which hit on head of Karambir Singh @ Nikku, as a result of which, he fell on the ground and then Jobanpreet Singh alias JP gave blow of base ball bat which hit Karambir Singh alias Nikku and Mukhtiar Singh also gave blow of wooden log to Karambir Singh alias Nikku and when the complainant and his other son Manjit Singh tried to intervene, Darshan Singh gave blow of wooden handle of spade on the left side of head of the complainant, Major Singh gave datar blow which hit on his forehead of the complainant, Pritpal Singh gave base ball bat on the head of Manjit Singh, Harpal Singh alias Bhalla gave blow of wooden *sota* on left wrist of the complainant and when alarm was raised, the accused persons sped away from there and injured-Karambir Singh alias Nikku was taken to Civil Hospital, Fatehgarh Churian but he died on the way.

3. Counsel for the petitioner submits that as per allegations appearing on the record, the deceased sustained one fatal injury which is attributed to co-accused Tejinder Pal Singh. He further submits that the petitioner has been falsely implicated in this case and only, *lalkara* has been attributed to petitioner-Balwinder Singh @ Balwant Singh @ Bau and co-accused Jaswant Singh. He further submits that so far as offence under Section 302 IPC is concerned, liability of the petitioner has been fastened with the aid of Section 149 IPC and it is a matter of trial as to whether the

petitioner was having any intention to kill Karambir Singh @ Nikku. He further contends that during trial, both eye witnesses namely complainant and his son Manjit Singh are already examined. He further submits that no injury has been attributed to petitioner who is alleged to have raised *lalkara*. It is further submitted that evidence of exhortation is a weak piece of evidence and is used to implicate some innocent persons, in addition to actual assailant by saying that the concerned person raised *lalkara* and exhorted the assailants to attack the victim.

4. Counsel for the petitioner further submits that the petitioner is in custody for the last 1 year and 2 months and he is having no criminal history. He further submits that it will take considerable time for the trial to conclude. So, prayer is made that the petitioners be released on bail.

5. Present petition is resisted by the State counsel as well as by the counsel for the complainant. They submit that the petitioner was member of unlawful assembly which attacked deceased-Karambir Singh alias Nikku, as a result of which, he died. It is further submitted that there was clear intention of the said unlawful assembly to cause fatal injuries to the deceased and even if the petitioner has not caused the fatal injuries, he is liable for the same as per provisions of Section 149 IPC and is accordingly, charged by the learned trial Court. It is further contended that the trial is going on.

6. State counsel, however, on instructions from ASI Joginder Singh has not disputed that during trial, complainant-Gurwant Singh and injured eye witness-Manjit Singh are examined and that the petitioner is in custody for the last more than 1 year and 2 months and he is having no criminal antecedents.

7. I have considered the submissions made by the counsel for the parties.

8. There is no doubt that the petitioner is named in the FIR. From the perusal of FIR, it appears that no injury has been attributed to the petitioner. The petitioner who is alleged to have raised *lalkara*, is stated to be armed with handle of spade. The petitioner has been impleaded as accused for commission of offence under Section 302 IPC with the aid of Section 149 IPC. In the given circumstances, as no injury is attributed to the petitioner, it is a matter of evidence as to if there was any intention on the part of the petitioner to cause death of Karambir Singh alias Nikku. In terms of observations made in **Jainul Haque v. State of Bihar**; 1974 AIR (Supreme Court) 45, evidence of exhortation is in the nature of things, a weak piece of evidence. Further, in the instant case, both material witnesses namely the complainant and his son Manjit Singh have been examined. So, there is no apprehension that if released on bail, the petitioner is going to influence them. However, it will take time for conclusion of trial. Thus, no fruitful purpose is going to be served by prolonging the judicial custody of the petitioner for any further period.

9. In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

May 8, 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No