

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

202

CRM-M-57528 -2023 (O&M)
Decided on : 21.11.2023

SUDESH SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Puran Singh Hundal, Senior Advocate with
Mr. Ankush Chauhan, Advocate,
Mr. Harmanpreet Singh, Advocate and
Mr. Durga Dutt Sharma, Advocate for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

Mr. Gulam Nabi Malik, Advocate and
Mr. Sameydeen, Advocate
for the complainant.

HARSIMRAN SINGH SETHI , J. (Oral)

1. In the present petition, the prayer of the petitioner is for the grant of regular bail in case FIR No. 103 dated 03.05.2022 registered under Sections 302, 307, 148, 149 of the Indian Penal Code, 1860 and Sections 450, 326, 323 and 324 of the Indian Penal Code, 1860 (added subsequently) at Police Station Jandiala, District Amritsar, Punjab.

2. Learned Senior counsel for the petitioner argues that the petitioner has wrongly been implicated in the present case whereas, the petitioner was not even present at the spot of incident. Learned Senior Counsel further submits that the petitioner has been implicated in the present case only on the ground that the petitioner is working in the bank and by the said implications, the petitioner will also loose his job.

3. Learned Senior counsel further submits that keeping in view the fact that the eye witnesses i.e. father, mother and uncle of the deceased, have

already been examined, the further incarceration of the petitioner is not necessary as the trial is likely to take some time to conclude. Learned Senior counsel further submits that from the cross-examination of the said three eye witnesses, it is clear that the petitioner had not inflicted any injury upon the deceased hence, keeping in view the facts and circumstances of the present case, the petitioner is entitled for the grant of regular bail.

4. Learned State counsel on the other hand submits that the claim of the petitioner that he has been falsely implicated in the present FIR is not correct, as the petitioner is related to Jagroop Singh who is also one of the accused. Learned State counsel submits that the petitioner has been named in the FIR alongwith other co-accused with the clear allegations that the petitioner alongwith other co-accused inflicted the sharp edged injuries with the weapon attributed to them. Learned State counsel further submits that the deceased had received six injuries including the broken skull. Learned State counsel also submits that the interpretation being given to the cross-examination by the learned Senior counsel for the petitioner is not correct as, in the statement recorded under Section 161 Cr.P.C. not only the petitioner was named by all the three eye witnesses but the weapon alleged to him was also identified with the clear allegation that the petitioner had given the *datar*/sharp edged blow upon the deceased hence, keeping in view the gravity of the allegations alleged against the petitioner, the present petition seeking the grant of regular bail to the petitioner may kindly be rejected as the same will create hindrance in the trial.

5. Learned counsel for the complainant submits that the deceased has been killed with a common intention by an unlawful assembly hence, the prayer of the petitioner that the petitioner has no role to play, cannot be

looked into keeping in view the judgment of Hon'ble Supreme Court of India in Criminal Appeal No. 571 of 2021 titled as '**Kumer Singh vs. State of Rajasthan and another**', decided on 20.07.2021.

6. I have heard learned counsel for the parties and have gone through the case file with their able assistance.

7. It is a conceded fact that the deceased suffered injuries with the sharp edged weapon. It is also a conceded position that the sharp edged injury has been attributed to the the petitioner. The question which arises is that as to whether the contentions being raised on behalf of the petitioner that he has not inflicted any injury upon the deceased can be accepted in view of the evidence which has come on record or not?

8. From the statements recorded under Section 161 Cr.P.C. which have been perused in the Court and have also been shown to the learned Senior counsel for the petitioner, the name of the petitioner was duly found mentioned in the statement that he was carrying a *datar* and he has inflicted the *datar* blow upon the deceased alongwith other accused named in the FIR. The said statements recorded under Section 161 Cr.P.C. have been corroborated by the eye witnesses i.e. father, mother and uncle of the deceased.

Further, the argument which has been raised by the learned Senior Counsel appearing on behalf of the petitioner that in the cross-examination, when the eye witnesses were confronted with the statements recorded under Section 161 Cr. P.C. the name of Sandesh Kumar/Sudesh Singh /Sandesh i.e. the petitioner was not there, can not be accepted. Once in the actual statement recorded under Section 161 Cr. P.C., which has been shown to the Court as well as to the learned Senior counsel for the petitioner, it has been duly mentioned by the eye witnesses that all the accused

including the petitioner had inflicted the injuries with the *datar blow* upon the deceased and the deceased had received six injuries i.e. 05 sharp edged injuries including a broken skull and 01 blunt injury, the assertion of the learned senior counsel for the petitioner that the statements of eye witnesses given before the Court are contrary to the statements recorded under Section 161 Cr. P.C, can not be accepted at this stage.

9. Further, in the present case, Sections 148 and 149 IPC have also been invoked which relates to the unlawful assembly with the common intention.

10. That being so, keeping in view the judgment of the Hon'ble Supreme Court of India in **Kumer Singh' case (Supra)**, the individual role is not liable to be considered for considering the prayer for the grant of regular bail to the petitioner .

The relevant para of the said judgment reproduced as under:

“14. The submission on behalf of the accused that the accused were alleged to have been armed with lathis and therefore they were released on bail is concerned, at the outset, it is required to be noted that all the accused are charged for the offences punishable under Sections 302 and 307 read with Section 149 of the IPC. At this stage, the individual role of the accused is not required to be considered when they are alleged to have been the part of the unlawful assembly. There were 26 injuries found on the dead body of the deceased and 11 injuries on the injured Vikram Singh by blunt and sharp weapons. Therefore, merely because they were armed with lathis

cannot be a ground to release them on bail, in the facts and circumstances of the case, more particularly when they are charged for the offences punishable under Sections 302 and 307 read with Section 149 of the IPC as well as Sections 147 and 148 of the IPC.”

11. Keeping in view the totality of the facts and circumstances of the present case, this court is of the view that the claim of the petitioner for the grant of regular bail is not made out at this stage. Accordingly, present petition stands dismissed.

12. Dismissed.

13. Criminal miscellaneous application pending, if any, shall also stands disposed.

(HARSIMRAN SINGH SETHI)
JUDGE

21.11.2023

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Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*