

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

CRA-S-208-2024
Decided on : 20.02.2024

Shinda Appellant

Versus

State of Punjab Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Kamal Narula, Advocate
for the appellant.

Mr. Amit Rana, Sr. DAG, Punjab.

Mr. P.S.Chahal, Advocate
for the complainant.

Manjari Nehru Kaul, J.(Oral)

1. Instant appeal has been filed impugning the order dated 21.12.2023 passed by Sessions Judge, Fazilka vide which regular bail in case FIR No.164 dated 14.09.2022 under Sections 302 IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015) (Section 148/149 IPC has been deleted) registered at Police Station Vairoke District Fazilka has been dismissed.

2. Learned counsel for the appellant *inter alia* contends that the appellant's false implication in the case in hand is evident from the fact that the material witness i.e. complainant Jaswinder Singh @

Sonu had not supported the case of the prosecution during trial, as a result of which, he was declared hostile whereas other eyewitness to the occurrence in question i.e. Varinderpal Singh @ Bindu had expired during the pendency of trial. It has been submitted that since the sole material witness in the case in hand i.e. complainant, who was also an eyewitness to the occurrence, stands examined further incarceration of the appellant would serve no useful purpose as 16 prosecution witnesses out of 19 still remain to be examined.

3. Per contra, learned State counsel assisted by counsel for the complainant while opposing the prayer made by learned counsel for the petitioner, has not disputed the submissions made by the counsel opposite qua the complainant having been declared hostile during trial. It has been further submitted that the next date of hearing fixed before the trial court is 06.03.2024 when more prosecution witnesses are likely to be examined.

4. I have heard learned counsel for the parties and perused the material placed on record.

5. The petitioner has been in custody since 14.09.2022. The case in hand is based on eyewitness account, which is evident from the perusal of the FIR, which is reproduced as under:

“Statement of Jaswinder Singh @ Sonu s/o Kehar Singh s/o Musha Singh r/o Chak Budday Ke, aged about 35 years Mb. No-65014-39503.

Stated that I am resident of above said address. I am working with Ex.Sarpanch namely Deepak Kumar s/o Mulkh

Raj r/o Dhani Mehari Ram. Yesterday, on dated 13.09.2022 at about 3.00 pm, I was present at home. On that Toni @ Gurdeep Singh, Vijay Kumar son os Bhajan Lal and Vipan son of Bhagwan Chand r/o Chak Bodla came at the house of my brother Chamkaur Singh and said that you has stolen water motor from our fields. Start argument with my brother Chamkaur Singh to whom I said that, he has not stolen your water motor. I make them understand. After that at about 7.30 pm, I was gone in the filed of Deepak Sarpanch. When I reached in the middle of the village Budho Ke, on that Toni @ Gurdeep Singh armed with wooden stick (bala), Vijay Kumar armed with iron pipe, Vipan Kumar armed with kahi, Chinda @ Chhinder son of Chandi Ram armed with baseball, Subash Chand son of Jagir Chand armed with dang and Ramesh Chand joshan son of Ram Chand armed with handle of spade (kahi dasta) resident of Chak Bodho Ke in connivance with the each other beaten to my brother, whereas, in the presence Toni @ Gurdeep Singh gave his armed wooden stick (Bala) upon the left knee of my brother, Vijay Kumar gave his armed iron pipe on the back side of head of my brother and my brother was fell down and gave dang upon the brother, when he was fell down. Ramesh Chand beaten with handle of spade (kahi dasta) and Ramesh Chander Joshan has gave his armed handle of spade to whom I stop, on that day oppose me and said your brother Chamkaur Singh has theft in the village, today we will not spare him, from there I came at home. These all the accused persons gave injuries to my brother when he was lying with their weapons. The condition of my brother become critical, on that we took my brother upon Tata S (Chota Hathi) and took at Civil Hospital, Jalalabad where my brother Chamkaur Singh died, these all were ran away

after left the dead body of my brother. Today, I came to know on that I and my brother Shinder Singh came to the police station to record the statement. When these all gave injuries to my brother on that Parwinder @ Bindu s/o Kashmir Lal r/o Budho Ke came at the spot. Who also stop them to give injuries to my brother Chamkaur Singh. The reason behind the occurrence is that due to the suspicion of theft in the village, abovesaid persons and 4/5 unknown persons has murdered my brother by giving injuries. You met us, statement is recorded, heard is correct. Action be taken.”

6. In the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of regular bail to the appellant more so since the sole material witness i.e. the complainant not only stands examined but also did not support the case of the prosecution. Accordingly, the instant petition is allowed. The appellant be admitted to bail on his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

7. 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.

20.02.2024
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(MANJARI NEHRU KAUL)
JUDGE

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