

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3790-2024

Reserved on: 02.02.2024

Pronounced on: 07.02.2024

2024:PHHC: 017018

VINAY KUMAR ALIAS MITHU

... PETITIONER

Vs.

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Japjit Singh Johal, Advocate, for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

Mr. Naveen Batra, Advocate, for the complainant.

DEEPAK GUPTA, J.

By way of this petition, filed under Section 438 Cr.PC, petitioner prays for grant of anticipatory bail in case FIR No.001 dated 02.01.2017 (Annexure P1) under Sections 307/323/34 IPC [*Section 302 IPC added later*] registered at Police Station Talwara, District Hoshiarpur.

2. This is the second petition for this purpose. The earlier petition bearing CRM-M-2525-2024 was dismissed as withdrawn vide order dated 18.01.2024 (Annexure P10) with liberty to file fresh petition.

3.1 Perusal of the paper book would reveal that FIR has been registered on the statement made by Neeraj Kumar son of Ram Asra to the Police on 02.01.2017. As per the said statement, said Neeraj Kumar along with his friend Sandeep Kumar @ Sunny s/o Gurmeet Singh had gone on 22.11.2016 to attend the marriage of sister of his friend at village Bhadrian. DJ was being played in the party. They (Neeraj Kumar and Sandeep Kumar @ Sunny) had some scuffle with Vicky resident of

Bhadaria, Nirmal Singh's younger son, and Kaka, who gave beatings to them. They were then returning on their motorcycle at about 10:30 PM and as they reached at village pond, one of the above stated persons hit stick to Sandeep Kumar @ Sunny, but both of them i.e. Neeraj Kumar and Sandeep Kumar @ Sunny came towards their village. It was alleged further that at about 11:00 PM, as they reached village Mera Jatta, Kamahi Devi Road, moving towards home, two motorcycles came. On one of the motorcycle, Vicky and Nirmal's son were riding and Nirmal's son hit a dang on the head of Neeraj Kumar (Complainant); whereas Kaka sitting behind the other bike hit a dang at the head of Sandeep Kumar @ Sunny. Their motorcycles lost control. They fell on the road. The three assailants along with two others fled away. Some passerby called 108 and sent them to the hospital. It was further stated by Neeraj Kumar that after giving medication to him at Civil Hospital Dasuya, he was sent back, whereas Sandeep Kumar @ Sunny was referred from Dasuya Hospital to Capital Hospital Jalandhar and then to Aman Hospital, Hoshiarpur. Neeraj Kumar further stated that due to his ill health, he did not get matter reported to Police.

3.2 It is revealed further that on 23.11.2016, wireless message was received at Police Station Dasuya from Civil Hospital Dasuya regarding the admission of Sandeep Kumar @ Sunny @ Mani and for taking action. ASI Satnam Singh reached there and came to know that Sandeep Kumar @ Sunny had been admitted to Capital Hospital and was not fit to make the statement. ASI Satnam Singh then went to the village to obtain statement of Neeraj Kumar, but he did not make the statement due to his ill health. Sandeep Kumar @ Sunny was stated to be admitted in

Aman Hospital, Hoshiarpur and was not in a position to make the statement. His condition was opined by the doctor to be dangerous to life.

3.3 It is on 02.01.2017 that Neeraj Kumar made statement before the police narrating the incident and then the FIR under Sections 307/323/34 IPC was registered. As Sandeep Kumar @ Sunny expired on 12.02.2017 during his treatment at Aman Hospital, Hoshiarpur, Section 302 IPC was added.

3.4 During investigation, Vipin Kumar @ Goldy s/o Nirmal Singh; Vinay Kumar @ Mithu s/o Ashwani Kumar (*petitioner herein*) and Mohit Kumar @ Kaka s/o Devraj were arrested on 14.02.2017. Different representations were received by the police authorities alleging innocence of the arrested persons, which were marked for an inquiry by DSP, Dasuya. Said DSP conducted necessary enquiry, recorded statements of residents of locality near place of occurrence including that of Hardish, who had dialed 108 to call the ambulance, and came to the conclusion that complainant Neeraj Kumar and Sandeep Kumar @ Sunny (deceased) had both consumed liquor and that it is under the influence of liquor that they had fallen off from the motorcycle, which had become uncontrolled and that it is due to the head injury on account of the fall off from the motorcycle that he died during treatment. Recommendation was accordingly made by him to cancel the FIR. Said enquiry report was approved by SSP, Hoshiarpur. The three arrested persons i.e. petitioner- Vinay Kumar @ Mithu, Vipin Kumar @ Goldy and Mohit @ Kaka were released by Id. Judicial Magistrate on 20.04.2017 on the application moved by the police.

3.5 Cancellation report was then submitted before the Court on

20.04.2017 but Id. JMIC Mukerian, did not accept the same and vide order dated 16.09.2019 returned the same for re-investigation. Mother of the deceased Sandeep Kumar @ Sunny also approached this Court by filing CRM-M-40671-2017 and vide order dated 03.02.2023, this Court directed to provide ample opportunities to aggrieved party so as to file protest petition.

3.6 Re-investigation was conducted, but as the same facts were found, so again the cancellation report was prepared, which was duly approved by the SSP, Hoshiarpur and then presented to the Court of Ld. Area Magistrate on 19.01.2023.

3.7 Ld. Area Magistrate refused to accept the cancellation report and summoned the petitioner and two others i.e. Mohit @ Kaka and Vipin Kumar @ Goldy to face trial under Section 302/323/34 IPC. As they did not appear, warrants of arrest were directed to be issued against them.

3.8 It is in the aforesaid background facts that present petition seeking anticipatory bail is moved by the petitioner.

4.1 It is contended by Id. counsel that petitioner has been falsely implicated; that he is neither named in the FIR nor any role or injury is attributed to him; that there is long delay of 41 days in registration of the FIR, which has not been explained; that FIR has been lodged after due deliberation and that a false story has been concocted.

4.2 Ld. counsel has then drawn attention towards the OPD slips and the medical certificate (Annexure P1-A) to contend that from the spot of occurrence, complainant Neeraj Kumar, and Sandeep Kumar @ Sunny (deceased) were initially taken to CHC, Hajipur and it was mentioned that injuries were sustained by both of them in a road side accident and both of

them i.e. Sandeep Kumar @ Sunny and Neeraj Kumar had refused for getting the case registered. Certificate to that effect was also given by the Medical Officer, CHC, Hajipur.

4.3 Ld. counsel then drawn attention towards medical summary of Capital Hospital (Annexure 1B), revealing that Sandeep Kumar @ Sunny (deceased) was admitted there on 23.11.2016 at about 3:40 AM i.e. just approximately 4 ½ hours from the time of occurrence and he left against medical advice on 24.11.2016 at 09:45 PM. In the said medical summary also, it is mentioned that Sandeep Kumar @ Sunny was admitted in the hospital with the complaint of alleged history of road side accident on 22.11.2016. Not only this, it is clearly mentioned that he (Sandeep Kumar @ Sunny) had the history of alcohol intake.

4.4 Ld. counsel contends further that detailed inquiry was conducted by DSP, Dasuya, in which the persons present near the spot of occurrence were joined, including Hardish, who had dialed 108 to call the ambulance. Ld. counsel has drawn attention towards the inquiry report (Annexure P2), as per which the mobile phone of Hardish was verified and it was found that he had called 108 helpline for ambulance and said Hardish had disclosed to have reached the spot on hearing the sound of motorcycle dragging due to fall on the road and that two boys, and that he had asked the boy, who had fallen on the kaccha portion of the road about mobile number of his parents but who had stated that he had consumed alcohol and so he did not want to inform the parents. After conducting detailed inquiry, the cancellation report was recommended.

4.4 Ld. counsel contends that twice the cancellation report has been filed, but ld. court has rejected the same. Ld. counsel also contends

that despite the fact that complainant of the case Neeraj Kumar made statement before the Court that he did not have any objection for acceptance of the cancellation report, the Court rejected the same. Id. counsel also submits that petitioner is ready to appear before the trial Court concerned and that he be provided necessary protection.

5.1 Opposing the petition, Id. State counsel, ably supported by Id. counsel for the complainant, submits that Id. JMIC in his order dated 23.10.2023 (Annexure P8) has given detailed reasons for rejecting the cancellation report and for summoning the petitioner and two others to face trial under Sections 302/323/34 IPC, and that it was found by Id. Magistrate that police was colluding with the culprits.

5.2 However, Id. State counsel concedes that as per the Status report filed on behalf of the State by way of affidavit dated 01.02.2024 of Jagdish Raij, PPS, Deputy Superintendent of Police, Sub Division Dasuya, District Hoshiarpur, cancellation report has been submitted twice and that petitioner has been summoned by the Court.

6. I have considered submits of both the sides and appraised the record.

7. There is unexplained delay of 41 days in reporting the matter to the police, despite the fact that Neeraj injured was discharged from hospital on date of incident itself after first aid. As per the initial version evident from Annexure P1-A of Medical Officer, CHC, Hajipur, where the complainant and deceased were initially taken, it was a road side accident and both of them had refused to get the case registered. The Medical Officer of Capital Hospital, where Sandeep Kumar @ Sunny was taken also mentioned in the medical summary that it was reported to be a road

side accident and that there was alcohol intake by the deceased. The detailed inquiry has been conducted by DSP, Dasuya by even joining Hardish, who had called the ambulance by dialing helpline number 108 at the spot and who had found that complainant & deceased had fallen off from the motorcycle having consumed the alcohol. It will be a matter of trial, as to whether petitioner and two others are in any way involved in causing injuries to complainant Neeraj Kumar and deceased Sandeep Kumar @ Sunny. The fact remains that police after conducting investigation, submitted the cancellation report twice. It is also not disputed that police does not require the petitioner for any custodial interrogation.

8. Having regard to all the abovesaid facts and circumstances, but without commenting anything further on merits of the case, petition is allowed. Petitioner is directed to be released on interim bail by the arresting officer in the event of his arrest on account of warrant of arrest having been issued against him. At the same time, petitioner is hereby directed to surrender before the trial Court concerned on or before 21.02.2024. On his such surrender, the Court concerned shall admit the petitioner to bail on usual terms and conditions. The Court shall also be at liberty to impose necessary conditions to ensure the presence of the petitioner during trial.

07.02.2024

Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
No