

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

CRM-M-16959-2023

Reserved on:15.02.2024

Pronounced on:19.02.2024

2024:PHHC: 023009

BALWANT SINGH

. . . . PETITIONER

Vs.

STATE OF PUNJAB

. . . . RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. P.P.S. Duggal, Advocate,
for the petitioner.

Mr. R.K. Takkar, DAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 CrPC, petitioner prays his release on regular bail in case FIR No.44 dated 17.03.2018 under Sections 307/148/149 IPC [Section 302 IPC was added later on] registered at Police Station Guruhar Sahai, District Ferozepur.

2.1 FIR was lodged on the complaint of Bagicha s/o Kashmir Singh, resident of Basti Kesar Singh Wali P.S. Guruhar Sahai. According to him, there was a dispute over 17 Kanal 14 marla of land situated at Basti Kesar Singh Wali with his sister Vidya and brother-in-law (Jija) Balwant Singh (present petitioner), as they had taken his father Kashmir Singh to tehsil complex Guruhar Sahai on the pretext of elderly pension and deceitfully got executed sale deed regarding 17 kanal 14 marla of land in her name. Civil Suit regarding that land was pending in the Court. It was stated further by the complainant Bagicha Singh that he was in possession of the land in dispute and had sown wheat crop therein. On 14.03.2018 at

about 6-6.30 AM, his father Kashmir Singh was going to the fields to irrigate the crop. He (complainant) was behind him. As they reached near the motor installed in the fields, Balwant Singh (petitioner) along with his wife Vidya, Jagminder Singh son of Balwant Singh, Lakha Singh son of Gulab Singh, Rajwinder Singh son of Lakha Singh, Sukhwinder Singh son of Lakha Singh, Balwinder Singh son of Kishan Singh, Pritam Kaur wife of Balwinder Singh and Gurmeet Singh son of Balwinder Singh came there. All of them were armed with different kinds of weapons like iron *sabbal*, sticks etc. Vidya exhorted to catch hold of them and teach them a lesson. Then Balwant Singh gave iron sabal blow on the head of Kashmir Singh, who fell on the ground. While he was lying, other culprits assaulted him with their weapons. On the noise raised by him, the assailants fled away. It was further stated by the complainant that he called his friend Pyara Singh and then they took injured father Kashmir Singh to Civil Hospital, Guruhar Sahai. Due to the grievous injuries, doctor referred them to Medical College and Hospital, Faridkot. His father was not able to speaking anything.

2.2 The endorsement made below the FIR would reveal that on getting information regarding admission of Kashmir Singh in Medical College and Hospital, Faridkot in injured condition, police reached there on 15.03.2018 and wanted to record the statement of the injured, but he was opined to be unfit to make a statement. Doctor was asked to prepare the MLR of the injuries inflicted to the patient. Doctor on duty told them that the same was to be prepared by Dr. Ashwani Kumar. However, Dr. Ashwani Kumar told them on telephone that as the patient had not regained consciousness yet, so neither the MLR could be prepared nor the nature of injuries could be ascertained, at that stage. DDR was registered on that day.

2.3 On 17.03.2018, police reached the hospital again. However, injured Kashmir Singh was again opined by the Doctor to be unfit to make the statement. Dr. Ashwani Kumar was asked to prepare the MLR, who told them that he was out of station and will prepare the MLR after examining the patient later. Then the statement of Bagicha Singh, the son of the injured was recorded and based thereon, FIR under Sections 307/148/149 IPC was registered.

2.4 The status report, as filed by the police, also reveals that as Kashmir Singh died during treatment, Section 302 IPC was added. Cause of death was opined by the Doctors to be the head injury.

2.5 As per the status report filed by the respondent-State, during the course of investigation, Vidya wife of Balwant Singh, Jagminder Singh son of Balwant Singh, Lakha Singh son of Gulab Singh, Rajwinder Singh son of Lakha Singh, Balwinder Singh son of Kishan Singh, Pritam Kaur wife of Balwinder Singh and Gurmeet Singh son of Balwinder Singh were found innocent by Superintendent of (Head Quarter), Ferozepur. Sections 148 & 149 IPC were deleted. The main accused Balwant Singh (petitioner) was arrested on 18.11.2022.

2.6 After completion of investigation, challan was presented in the Court. Charges have since been framed and case is now fixed for prosecution evidence.

3.1 It is contended by ld. counsel that petitioner has been falsely implicated at the instance of the complainant, who is his wife's brother. It is the complainant, who was maltreating his father i.e. deceased. Complainant wanted his father to transfer 17 kanal 14 marla of land in question in his name and as deceased Kashmir Singh refused, complainant had ousted him

from home, regarding which deceased had executed an affidavit (Annexure P1). Later on, fearing danger to his life from Bagicha Singh, deceased had started living with his daughter Vidya i.e. wife of the petitioner. Out of love and affection, deceased had executed and got registered sale deed dated 12.04.2012 regarding 17 kanal 14 marla of land in favour of Vidya and this is the reason for hatching a conspiracy by the complainant, who actually killed his father-Kashmir Singh and then implicated the petitioner, his wife and others in this false case.

3.2 Ld. counsel for the petitioner pointed out that complainant had also filed a civil suit against his father Kashmir Singh & sister Vidya and others regarding the land in dispute, but the same was dismissed on 21.02.2017 vide Annexure P2. As per the knowledge of the petitioner, no appeal against that judgment has been filed yet.

3.3 It is contended further that the occurrence pertains to 14.03.2018 at about 6-6:30 AM and the injured was taken to Civil Hospital, Guruhar Sahai, from where the injured was referred to Guru Gobind Singh Medical College and Hospital, Faridkot. Ld. counsel contends that deceased was discharged from the hospital on 02.04.2018 in proper health condition and later on, he expired on 25.04.2018 in the house of the complainant and taking advantage of the death, Section 302 IPC was added. It is pointed out that during the period of discharge till death, statement of deceased Kashmir Singh was not recorded.

3.4 Ld. counsel also pointed out that petitioner is in custody for the last 1 year and 23 days with no criminal antecedents; that trial may take long time to conclude and so, in all these circumstances, he be granted bail.

4. Ld. State Counsel opposed the petition by pointing out

towards the gravity of the offence and that petitioner is attributed to have given head injury to the deceased.

5. I have considered submission of both the sides and have appraised the record carefully.

6. Perusal of the FIR would reveal that as many as 9 persons including petitioner Balwant Singh and his wife Vidya (sister of complainant), Jagminder Singh son of Balwant Singh, Lakha Singh son of Gulab Singh, Rajwinder Singh son of Lakha Singh, Balwinder Singh son of Kishan Singh, Pritam Kaur wife of Balwinder Singh and Gurmeet Singh son of Balwinder Singh, all armed with different kind of weapons are alleged to have come to the spot, but only Vidya is attributed to have raised lalkara to caught hold of deceased Kashmir Singh and petitioner Balwant Singh is attributed to have given iron sabal blow on the head of Kashmir Singh. Others are also alleged to have assaulted the deceased with their weapons. However, the status report as filed by the respondent-State would reveal that except for petitioner-Balwant Singh, all others including Vidya were found to be innocent. This in itself indicates that complainant tried to exaggerate the occurrence and so, truthfulness of his statement is required to be tested by corroborative evidence. Though, complaint was present at the spot as per him but did not intervene to save his father and remained an onlooker.

7. Further, complainant claims that his sister and brother-in-law (i.e. petitioner) had got the land in dispute transferred in the name of his sister, regarding which dispute was pending in the civil court. However, petitioner has placed on record copy of the judgment dated 21.02.2017 passed in Civil Suit No.415 of 2013 titled 'Bagicha Singh Vs. Kashmir

Singh and others', which would reveal that the suit filed by the complainant- Bagicha Singh against his father Kashmir Singh and sister Vidya was dismissed by the Court in February 2017 itself i.e., more than 1 year prior to the alleged date of occurrence. In the FIR, complainant did not mention that civil suit regarding the land in dispute had already been decided against him.

8. Still further, as per FIR, Kashmir Singh in injured conditions was taken to Civil hospital, Guruhar Sahai, from where he was referred to Medical College and Hospital, Faridabad. Although Kashmir Singh expired on 25.04.2018 due to the injury allegedly caused to him on 14.03.2018, but surprisingly, no medico legal report was prepared either in Civil Hospital Guruhar Sahai, where the Kashmir Singh was initially taken or in Guru Gobind Medical College and Hospital, Faridkot, where he was referred. As per the police proceedings recorded below the statement of Bagicha Singh in the FIR, concerned doctor did not prepare the MLR. Even the postmortem report, copy of which is Annexure P4, as per the information provided by the police, deceased Kashmir Singh died due to injuries sustained as a result of physical assault on 14.03.2018. The PMR records further as under:

“As per hospital record –

Referred from CHC Guruhar Sahai without issuing MLR vide Registration No.E No.219 dated 14.03.2018 and admitted at GGS Hospital Neurosurgery ward under Dr. Amit Narang with Diagnosis of right Temporo Parietal Sub Dural Haematoma and on 02.04.2018 after conservative management.”

9. Although, it is not clearly mentioned that Kashmir Singh was discharged on 02.04.2018 after conservative management, but it is a specific contention of the petitioner that Kashmir Singh was discharged on

02.04.2018 after conservative management and the said contention has not been refuted by the respondent-State. Another contention of the petitioner that Kashmir Singh after his discharge on 02.04.2018 was taken by complainant to his home and he then expired on 25.04.2018 is also not refuted by the State. Status report is silent as to why the statement of Kashmir Singh was not recorded till his death on 25.04.2018, once he had been discharged on 02.04.2018. Although on 17.03.2018, when police recorded the statement of complainant Bagicha Singh regarding the occurrence, Kashmir Singh was unfit to make the statement on that day, but nothing has come on record as to when Kashmir Singh had gained consciousness, and why his statement was later on not recorded by the police till his death.

10. Counsel for the petitioner has further drawn attention towards subsequent opinion taken from Guru Gobind Medical College and Hospital, Faridkot (Annexure P5) [*referred as medico legal report though it is not so*], as per which said subsequent opinion was taken on 30.11.2019 and which reads as under: -

“With reference to your request letter No.4533.Reader. SP, City, Ferozepur dated 29.11.2019 after going through the findings of Postmortem report, Police inquest papers, Neurosurgeon treatment record, Pathology report and Chemical analysis report and subsequent opinion report dated 26.11.2019, considering location of injury No.1 on right side of top of head, I am of the opinion that the possibility of injury No.1 being sustained as a result of assault cannot be ruled out, however circumstantial evidence must be taken into consideration.”

11. As is evident from Annexure P5, even as per this opinion taken after more than 1 ½ year of the date of death of Kashmir Singh, no clear opinion was given that injury on the person of Kashmir Singh was due to the assault as was alleged by the complainant, though its possibility could

not be ruled out. As per the opinion of the concerned Doctor, the circumstantial evidence was required to be taken into consideration.

12. Apart from above, petitioner is in custody since 21.11.2022, as per the custody certificate placed on record which shows that custody of the petitioner is approximately 1 year and 3 months. Petitioner has no other criminal case pending against him. Trial is likely to take long time to conclude.

13. Taking into consideration all the aforesaid facts and circumstances, but without commenting anything further on the merits of the case, this petition is allowed. Petitioner is admitted to regular bail on his furnishing requisite bail bonds and surety bonds to the satisfaction of the Ld. trial Court/Duty Magistrate concerned, on usual terms and conditions. It is, however, made clear that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case by the trial Court while deciding the case on merits.

19.02.2024
Vivek

(DEEPAK GUPTA)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |