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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28515-2024

Date of Decision: 18.09.2024

Ashwani

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:-. Mr. Prabhjeet Singh Sullar, Advocate
for the petitioner.

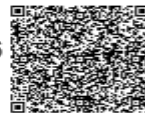
Mr. Gaurav Bansal, DAG Haryana

Mr. Pankaj Bali, Advocate
for the complainant

KIRTI SINGH, J.(Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.246 dated 03.09.2023, registered under Sections 323, 34, 341, 506, 307 IPC (Section 427 IPC added later on) at Police Station Nissing, District Karnal.

2. The facts in brief are that the present case was registered at the behest of complainant Salinder Kumar alleging that in August 2022, Naseeb son of his aunt(Bua), was in a live-in-relationship with girl namely Anjali and remained in the safe house at Karnal for 02 days. Thereafter, a Panchayat was convened and Anjali went back to her parents on her own accord and left Naseeb in pursuance to the decision of the Panchayat. That Ashawani @ Jonny and Ankit who were



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related to the girl nursed a grudge against Naseeb. On 02.09.2023, at around 8 PM, the complainant was in his village Gondar, where he saw Naseeb, coming on a motorcycle. In the meantime Ashwani @ Jonny, Ankit and Ankush came there in a Maruti car. Thereafter, Ankush caught hold of Naseeb and Ashwani @ Jonny armed with axe (Gandassi) hit his head and Ankit attacked Naseeb with a stick. Naseeb fell on the ground then the assailants fled away. Naseeb was taken to the Government Hospital, Nissing, from there he was referred to Government Hospital, Karnal,

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is argued that offence under Section 307 IPC are not made out against the petitioner. Learned counsel for the petitioner has placed reliance upon judgments passed by this Court in CRM-M-3957-2022 titled as *Sonu @ Sonu Singh vs. State of Punjab* decided on 18.05.2022 and CRM-M-2582-2022 titled as *Suresh vs. State of Haryana* decided on 08.02.2022. He further submits that the petitioner is a man of clean antecedents and there is no other case registered against him.

4. Learned counsel for the petitioner submits that injury No.1 is attributed to the petitioner. He further contends that based on the injuries suffered, the opinion of the doctor was obtained. On 29.11.2023, the doctor gave a report whereby injury No.1 is stated to be “dangerous to life”. He submits that an injury which is dangerous to life is, in fact, an injury endangering the life, and therefore, punishable under Section 326 IPC. For an injury to be one under Section 307 IPC, the opinion must be to the effect that the injuries suffered by the injured were sufficient to cause death in the ordinary course of nature and that the injured would have died but for timely medical aid. However, no such opinion was obtained. He,



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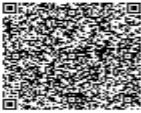
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thus, contends that the injury inflicted would at best be an injury attracting Section 326 IPC.

5. Learned counsel for the petitioner has placed reliance on the judgment passed in the case of “*Atma Singh versus The State of Punjab, 1982(2) CRL 496*, wherein this Court held as under:-

“11. It appears that the doctors who had been conducting the medico legal examinations have been using the term 'dangerous to life' as synonymous with an injury which 'endangers life.' Even the Court at times have considered an injury described as dangerous to life as an injury envisaged in clause Eighthly of section 320 of the Indian Penal Code. In this regard reference can be made to Mohammad Rafi v. Emperor, AIR 1930 Lahore 305. In that the case the injury was on the right side of the neck about 2 " x ¾" in dimension inflicted with a sharp ⅓ edged weapon. The doctor had, in fact, in that case deposed that there was every possibility of the deceased surviving but for the wound becoming septic apparently as a result of it being pressed with hands and bandaged with dirty cloth in the initial stages before the deceased was taken to the hospital. The Court held that though a finding that the appellant knew that his act was likely to cause death, was not justified but at the same time, a wound on the neck, must at least be considered to be ' dangerous to life' within the meaning of Clause 8, Section 320 Indian Penal Code, and therefore, 'grievous' .

12. Palekar, J. too in Jai Narain Mishra and others v. State of Bihar, 1972 C.A.R. 19(S.C.), held, a penetrating wound 1¼" x " x chest wall deep on the right side of the chest caused ⅓ with a bhal



and described as 'dangerous to life' , as grievous injury and in the later part of paragraph 11 called this injury as one endangering life.

13. The expression 'dangerous' is an adjective and the expression 'endanger' is verb. An injury which can put life in immediate danger of death would be an injury which can be termed as 'dangerous to life' and, therefore, when a doctor describes an injury as ' dangerous to life', he means an injury which endangers life in terms of clause 8 of Section 320 Indian Penal Code, for, it describes the injury ' dangerous to life' only for the purpose of the said clause. He instead of using the expression that this was an injury which ' endangered life' , described it that the injury was ‘dangerous to life’ , meaning both the time the same thing.

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17. We are of the view that the Court is not absolved of the responsibility while deciding a criminal case to form its own conclusion regarding the nature of the injury, Expert' s opinion notwithstanding. The Court has to see the nature and dimension of the injury, its location and the damage that it has caused. Even when an injury is described as to be one which endangers the life the court has to apply its own mind and form its own opinion in regard to the nature of injury, having regard to the factors that should weigh with Court, already mentioned. We are also firmly of the view that wherever a doctor describes an injury as ' dangerous to life' and the nature of the injuries are such which could merit such a conclusion then such an injury has to be treated as 'grievous hurt' of the



description mentioned in first portion of clause 8 of Section 320 of the Indian Penal Code.

18. *For the reasons afore-mentioned, we acquit the appellant of the offence under section 307 of the Indian Penal Code and convert his conviction into one for an offence under section 326 of the Indian Penal Code and maintain the sentence awarded to him. In the result, the appeal stands disposed of accordingly”.*

6. Similarly, reliance is placed on the judgment in “**Mohinder Singh and others versus State of Punjab, 2012(4) RCR (Criminal) 214**, wherein this Court held as under:-

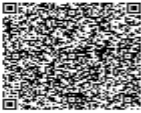
“45. There is another aspect of the matter which can be viewed from a different angle. As per medical evidence, there was only one incised wound with sharp edged weapon on the person of PW3-Hamir Singh. This injury was kept under observation and X-Ray was advised. Subsequently, as per X-Ray report, there was a fracture of the left frontal bone on the person of PW3- Hamir Singh. In the wake of police request, PW1-Dr.Sat Pal gave his opinion on 10.04.1995 to the effect that as there was a fracture of the left frontal bone, so injury No. 1 could have proved dangerous to the life of the patient. But in the cross examination, PW1 admitted that if there would have been no fracture on the skull, then the injury would not have been dangerous to life. He also admitted that unless the injury affects the brain and only bone is fractured (as in the present case), it cannot be termed as dangerous to life. It means, the words "dangerous to life" are equivalent to "endangering life" and such acts squarely covered



within the ambit of clause Eighthly of Section 320 Indian Penal Code, which is punishable under Section 326 Indian Penal Code. The distinction between the words "dangerous to life" and "endangering life" came to be determined by a Division Bench of this Court in Atma Singh v. The State of Punjab, 1982(2) CLR 496 and it was held as under :-

"Held, that the expression ' dangerous' is an adjective and the expression ' endanger' is verb. An injury which can put life in immediate danger of death would be an injury which can be termed as ' dangerous to life' and, therefore, when a doctor describes an injury as ' dangerous to life' , he means an injury which endangers life in term of clause 8 of Section 320 Indian Penal Code, for, it describes the injury ' dangerous to life' only for the purpose of the said clause. He instead of using the expression that this was an injury which 'endangered life' described it as 'dangerous to life' , meaning both the time the same thing".

46. *Likewise, this Court in Tej Ram v. The State of Punjab, 1978(6) CLR 76, observed that injury described by the doctor as ' dangerous to life' and if not treated i.e. to say that but for timely and medical aid the injured was likely to die. Such type of injury/opinion are not the type of the injury as would attract the provisions of Section 307 Indian Penal Code, which envisages an injury sufficient in the ordinary course of nature to cause death and such injury would fall within the ambit of clause Eighthly of Section 320 Indian Penal Code*



and would be punishable under Section 326 Indian Penal Code. 47. Similarly, this Court in case reported as State of Punjab v. Tara Singh 1987(1) Recent Criminal Reports (Criminal) 184, has observed that the opinion "possibility of injury No. 1 on the person of injured being dangerous to life could not be ruled out", in view of such opinion, charge under Section 307 Indian Penal Code cannot be sustained. XXXX XXXXX XXXX

49. *Thus, seen from any angle, in the given facts and circumstances of the instant case, to me, appellant-Mohinder Singh cannot possibly be held guilty of an attempt to murder with the offence prescribed under Section 307 Indian Penal Code and his co-appellants under Section 307/34 Indian Penal Code as well. The act of appellant-Mohinder Singh squarely falls within the ambit of clause Eighthly of Section 320 Indian Penal Code, which is punishable under Section 326 Indian Penal Code. To this extent, the trial Court appears to have gone legally wrong in this relevant behalf.*

50. *In the light of aforesaid reasons, appellant-Mohinder Singh is hereby acquitted of the charge framed against him under Section 307 Indian Penal Code. Be that as it may, he is held guilty and is hereby convicted under Section 326 Indian Penal Code. However, his conviction under Section 324/34 Indian Penal Code is maintained. Again, it is not a matter of dispute that appellant-Mohinder Singh has already undergone rigorous imprisonment for a period of about five months. He has already suffered the agony of protracted trial for the last fifteen years, so in my view, ends of justice would be sub-served,*



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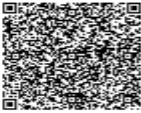
if his sentence of imprisonment under Sections 326 and 324/34 Indian Penal Code is reduced to the period already undergone by him. I order accordingly.”

7. Learned State counsel has filed the custody certificate dated 18.09.2024 in Court today, which is taken on record. As per custody certificate, the petitioner has undergone an actual custody of 01 year and 12 days and there is no other criminal case registered against him. Learned State counsel on instructions from the concerned investigating officer submits that charges were framed on 19.03.2024 and till date, out of total 13 prosecution witnesses only 01 has been examined. However in view of the serious allegations against the petitioner having caused the injury attracting Section 307 IPC, he is not entitled to the concession of regular bail.

8. Heard the rival submissions made by learned counsel for the parties and perused the record.

9. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. The petitioner has undergone an actual custody of 01 year and 12 days. The investigation is complete and out of total 13 prosecution witnesses only 01 has been examined. The petitioner has clean antecedents and no other case is registered against him. The conclusion of the trial will take considerable time and further incarceration will not serve any purpose.

10. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the



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satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (iii) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (iv) The petitioner shall not commit an offence similar to the offence of which she is accused of, or for commission of which she is suspected.
- (v) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

11. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

12. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(KIRTI SINGH)
JUDGE

18.09.2024
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No