

2024:PHHC:028086

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-37009-2023 (O&M)
Date of Decision : February 28, 2024

KULVEER SINGH

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Atul Yadav, Advocate,
for the petitioner.

Mr.Abhinash Jain, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for of this Court for his being enlarged on regular bail, in case FIR No.461, dated 04.10.2019, under Sections 302 read with Section 34 of the IPC, registered at Police Station Bilaspur, District Gurugram.

2. Learned counsel for the petitioner, submits that the petitioner was arrested on dated 02.09.2021, in the instant FIR, and since then he is in custody and facing trial.

3. He further submits that the only allegation against the present petitioner and his co-accused is that they have given fist and kick blows in the abdomen of the deceased, and even this allegation does

find any corroboration from the medical evidence.

4. To led vigor to his argument he relies upon the medico-legal report relating to the deceased.

5. Learned counsel for the petitioner also submits that even if we treat the allegation in the instant FIR, as a gospel truth, it only invites the rigors of Section 304 IPC.

6. *Per contra*, the learned State counsel vociferously opposed the asked for relief on the ground that the petitioner alongwith his co-accused caused injuries to the victim, which caused his death.

7. He has also placed on record a reply dated 27.02.2024, by way of an affidavit of Mr. Harinder Kumar, Assistant Commissioner of Police, Pataudi, Gurugram alongwith the custody certificate *qua* the petitioner, which are taken on record.

8. As per the aforesaid reply, it transpires that the final report has been submitted against the petitioner on dated 17.11.2021, and thereupon, charges under Section 302 read with Section 34 of the IPC, was framed by the learned trial Court concerned on dated 31.03.2022, and out of total 34 prosecution witnesses as cited by the prosecution, 21 have already been examined, and 2 prosecution witnesses have been given up by the learned Public Prosecutor.

9. Before this Court evince the submissions made by learned counsel for the petitioner, it is apt to deal with the allegations as levelled in the instant FIR, for which extract of the FIR has been reproduced hereinbelow:-

“To the S.H.O. Police Station Bilaspur, District Gurugram. Sir, it is requested that 1, Rakesh Kumar son of Brahmdukt, resident of Dalpad, Police Station Rondmail, District Uddampur, State J&K and I was working in a delivery company at Bilaspur Pathredi for the last 1-1/2 months. Kunj Lal son of Shankar Dass, resident of village Pakhiai, Police station Uddampur and District Uddampur, J&K was also working in the company for the last one month. We have taken a room on rent from Parvinder, resident of Pathredi. Dhian Singh son of Bansi Lal, Kulveer son of Jeet Singh, resident of Satyalata, P.S. Chanaini and Pawan Singh son of Pritam Singh, resident of Landa, Police Station Chanaini J&K were also residing in our neighbouring room who were also working in the delivery company. On 29.09.2019 when I was sleeping in my room at about 12.45 A.M. I woke up when I heard the noise then I came out of my room then I saw Kulveer, Dian Singh and Pawan Kumar were beating Kunj Lal by fist and kick blow. I got him freed then Kunj Lal complained of pain in stomach. I called our contractor Satender son of Dharam Singh, resident of Uncha Majra and Sandeep son of Mohinder Singh, resident of Ghosgarh and both came in their car, then we all three taken Kunj Lal to Dev Jyoti Hospital at Pataudi and after that Kunj Lal was admitted to Dev Jyoti Hospital Rewari. On 30.09.2019 on having relief Kunj Lal was discharged from the hospital. Kunj Lal was sent to his native village along with co-villager Sholu Ram son of Lt. On 02.10.2019 Kunj Lal admitted to Uddampur Hospital by his parents and from there he was referred to Government Medical College Jammu. At about 6.00 P.M. Kunj Lal died during treatment. Kulveer, Pawan Singh, Dian Singh had beaten Kunj Lal mercilessly because of which Kunj Lal died. Legal action be taken against them. Today you have come in the medial collage and I have written a complaint and given it to you. Kulveer, Dian Singh and Pawan Singh had quarreled with Kunj Lal after consuming liquor.”

10. This Court has examined the police file as brought by the investigating officer ASI Ramesh Kumar, who is present in the Court as well as the submissions made by learned counsel for the petitioner and learned State counsel, and finds that the instant petition deserves to be allowed, not for one reason but for many, which are discussed hereinbelow:

First of all, whether, the death of the victim, which was occurred after 4 days of occurrence, can be co-related with the alleged incident, is a matter of trial and at this stage this

Court refrains to make any observation.

Secondly, the petitioner has suffered sufficient incarceration as about 2 years 5 months and 26 days as on today, and the examination of prosecution witnesses is still underway.

Thirdly, the argument raised by learned counsel for the petitioner, whether, the offence punishable under Section 304 IPC, is made out against the present petitioner, or Section 302 IPC is made out, is also a disputed question of fact and law, which is to be established by the prosecution, and thereupon, to be adjudicated by the learned trial Court concerned.

Lastly, though the petitioner at one point of time, had been declared a proclaimed offender, but for that reason, the benefit of regular bail cannot be denied as once he has already surrendered before the learned trial Court concerned, and is facing trial for the last about 2 ½ years.

11. Consequently, in view of the above, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail, on furnishing of bail bond, and **heavy surety** bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

12. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court.

Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

February 28, 2024

dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No