

236 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.1811-2023

Date of Decision: 06.02.2024

Sunil Kumar @ Dablu Saini and others

...Petitioners

vs.

State of Haryana

...Respondent

Coram : **Hon'ble Mr. Justice N.S.Shekhawat**

Present : Mr. Vikas Bishnoi, Advocate
for the petitioners.

Ms. Sheenu Sura, DAG, Haryana.

N.S.Shekhawat J. (Oral)

1. The petitioners have filed the present petition against the impugned order dated 10.07.2023, passed by the Court of Additional District and Sessions Judge, Fast Track Special Court, Fatehabad, whereby the bail application under Section 167(2) Cr.P.C., moved by the present petitioners/accused was ordered to be dismissed.

2. As per case set up by the prosecution, the FIR in the present case was registered on the basis of the statement made by Vinod Kumar son of Krishan Kumar, complainant, who alleged that at about 8.30 p.m. on 08.11.2022, he, Rajat son of Rajbir Singh and his brother Sagar had come to purchase vegetables at Balmiki Chowk, Tohana. His brother Sagar was purchasing vegetables separately from them. In the meantime, three persons came there on three motorcycles separately and they fired towards his brother

Sagar and one of the shot was fired on the hip of Sagar with an intention to kill him. He came to know that the Sunil @ Dablu and Shubham @ Lafti were also part of the group of the persons, who had fired at his brother. After firing shots with an intention to kill Sagar, the aforesaid persons fled away from the spot on their respective motorcycles. Sagar was shifted to General Hospital, Tohana and due to his critical condition, he was referred to Medical College, Agroha. A case was registered under Sections 148, 149, 307 of IPC and Section 25 of Arms Act against the accused and the investigation was commenced.

3. During the course of investigation, on 12.11.2022, the statement of Sagar, injured was recorded. Sunil alias Dablu Saini, Shubham alias Lefti, Sandeep alias Don and Ravi Boxer were arrested on 14.11.2022 and the weapons were recovered from Sunil alias Dablu Saini and Shubham alias Lefti. The recoveries were effected from the other two accused also. Further, on 13.12.2022, Deepanshu was arrested and one mobile phone was recovered from him. On 14.12.2022, Kuldeep alias Dipi, Pardeep alias Mania and Suraj were arrested, whereas co-accused Satbir alias Sattu, was arrested on 26.12.2022 and his disclosure statement regarding involvement in the present case was recorded. On 31.12.2022 treatment record of Sagar-injured was obtained and the opinion of the doctor concerned was also taken. After completion of the investigation, challan against the petitioners/accused was submitted before the Area Magistrate on 09.02.2023.

4. During the course of treatment, Sagar-injured died on 27.02.2023 and Section 302 IPC was added in the present case by the police. Thereafter, the parcels containing various organs were got deposited in Medical College,

Agroha and FSL, Hisar for investigation and the reports have not been received before the Court and it was stated that supplementary challan shall be submitted in the Court after completion of the investigation. Further, the petitioners/accused would be joined in the investigation for the offence under Section 302 IPC, after receipt of report of Chemical Examiner and after obtaining the report regarding cause of death.

5. Learned counsel for the petitioners contends that in the present case, Sunil @ Dablu Saini, Shubham @ Lefti, Sandeep alias Don and Ravi Boxer were arrested on 14.11.2022, whereas Deepanshu, petitioner was arrested on 13.12.2022. Kuldeep @ Dipi, Pardeep alias Mania and Suraj were arrested on 14.12.2022. Satbir @ Sattu was arrested on 26.12.2022 and they were sent to judicial custody by the Court. It was also argued that the first final report under Section 173 Cr.P.C. was presented before the trial Court on 09.02.2023. In the meantime, on 27.02.2023, Sagar-injured died and as such Section 302 IPC was added on 28.02.2023. Learned counsel further contends that Section 302 IPC was added on 28.02.2023, then the statutory period of filing of supplementary challan under the newly added section in the FIR was 90 days and since the period of 90 days had lapsed and the petitioners were continuing in jail itself, they were entitled to be released on bail under Section 167(2) Cr.P.C. Learned counsel further submitted that in the present case, the period of 90 days had lapsed after the death of Sagar-injured and since the final report under Section 173 Cr.P.C. had not been presented before the Court for commission of offence under Section 302 IPC, the petitioners were entitled to be released on bail.

6. On the other hand, learned State counsel has vehemently argued that in the present case, nine persons were arrested in the present case and the first final report under Section 173 Cr.P.C. was presented within a period of 90 days. Thereafter, on 27.02.2023, Sagar-injured had died and Section 302 IPC was added in the present case on 28.02.2023. Still further, after receiving chemical examination report, the opinion regarding cause of death of Sagar was obtained and on 17.08.2023, the concerned doctor was opined as under:-

“The cause of death in this case in our opinion is Renal failure as a result of Septicemia due to complications of Abdominal injuries which is alleged to cause by firearm and it is sufficient to cause death in its ordinary course of nature.”

7. Thereafter, the opinion was sought from the concerned doctors and on 14.10.2023, supplementary challan was presented before the Court. Learned State counsel further submits that the opinion regarding cause of death of Sagar-injured was obtained on 17.08.2023 and on 12.09.2023, the supplementary challan was presented against the petitioners/accused. He further prays that the present petition may be ordered to be dismissed.

8. I have heard learned counsel for the parties and with their able assistance, I have gone through the record of the case.

9. In the present case, no doubt all the petitioners were arrested for commission of offences under Sections 148, 149, 307 IPC and Section 25 of the Arms Act between 14.11.2022 till 26.12.2022. Thereafter, the challan was presented in the Court on 09.02.2023 i.e. within a period of 90 days in the present case. In the meantime, Sagar-injured died on 27.02.2023 and as such Section 302 IPC was added in the present case. However, the histopathology

and Chemical Examination reports were awaited, consequently, the petitioners were not joined in the investigation for the offence committed under Section 302 IPC nor were arrested in the present case. Thus, when the petitioners/accused were not even arrested in the present case and were yet to be arrested by the police, the application under Section 167(2) Cr.P.C. filed by the petitioners was not at all maintainable.

10. In fact, after the addition of Section 302 IPC in the present case, the police was still awaiting for the reports of histopathology and Chemical Examination and the petitioners were not formally arrested under Section 302 IPC and after obtaining the final cause of death, they were yet to be arrested in the present case. Still further, the petitioners were joined in the investigation and after associating them, the final report under Section 173 Cr.P.C. was presented by police before the Court of law and since the petitioners were not formally taken into custody, they could not have prayed for relief under Section 167(2) Cr,P.C.

11. Thus, finding no merits in the present petition, the same is ordered to be dismissed.

06.02.2024.
hemlata

(N.S.SHEKHAWAT)
JUDGE

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