

226

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-45945-2024
Date of decision: 13.11.2024

GURWINDER SINGH ALIAS JUGNU	Petitioner
Versus	
STATE OF PUNJAB	...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Sant Pal Singh Sidhu, Advocate
for the petitioner.

Mr. Raghav Garg, AAG, Punjab.

Mr. Mandeep Singh, Advocate,
for the complainant.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for them being enlarged on regular bail, in case FIR No.352 dated 07.10.2023, under Sections 302, 34, 148, 149 of IPC (Sections 307, 452, 323, 325 and 304 IPC added, and Sections 302 and 307 IPC deleted, later on), registered at Police Station City Faridkot. Faridkot.
2. The case, as set up by the prosecution agency, is that the instant FIR was registered on a statement made by one Baldev Singh, son of Atma Singh, which became the bedrock for the registration of the instant FIR. Initially the FIR was registered under Sections 302/34, 148 and 149 IPC, however, on the basis of the medical opinion, the offence under Section 302 IPC, was deleted, and offence under Section 304 IPC, was added later on.
3. As per the case of the complainant, one accused-Sandeep alias Bony alongwith 8-10 other persons, caused injuries to persons namely, Arshdeep Singh, Jashandeep Singh, Tejinder Singh and Mohit Kakkar, and furthermore, Tejinder

Singh succumbed to the injuries, as caused by accused persons in the instant occurrence. The relevant part of the FIR reads as under:-

“Statement of Baldev Singh son of Atma Singh son of Lakha Singh, resident of Sadha Wala, now Dream City, Machaki Mal Singh road, Faridkot, aged about 55 years, 81465-45613 stated that I Mobile No. am resident of aforesaid address and for the last 4/5 years I have been residing in Dream City, Faridkot along with my family. I am serving in Police Department 6-IRB and my duty is in Refinery, Bathinda. I have two children, out of whom Sukhjinder Singh is my elder son, Tejinder Singh is younger and my daughter is Sukhpreet Kaur. Both elder children are married and Tejinder Singh is unmarried. Sukhjinder Singh is doing private job at Chandigarh. Tejinder Singh is residing with us. In front of my house in the street a bench is lying where usually ladies and other persons sits. Arshdeep Singh and Jashandeep Singh, sons of Lakhwinder Singh Sodhi also sits on the said bench. On these boys 05-10-2023, were sitting on the bench, then Sandeep Singh alias Bony son of Tarsem, whose house is one house away from our house, had stopped sons of Lakhwinder Singh from sitting on the bench Today on 06-10-2023 at about 09.30 P.M., both sons of Lakhwinder Singh were coming on feet, to whom Bony stopped by calling them and they started quarrelling with each other. My son Tejinder Singh started intervening to separate them and in this course 08/10 more persons who had come with Bony, started beating them and while I was witnessing, Lakhwinder Singh and his mother also came running there and Bony and all these boys inflicted number of injuries on the person of his mother, Lakhwinder Singh, both sons Arshdeep Singh, Jashandeep Singh, Tejinder Singh, Mohit Kakkar. All the said persons were holding Kirpans, Kapas and Baseballs and I raised noise "Don't kill Don't kill" and after having heard my noise, finding the gathering being attracted to that place, all the accused fled away from the spot along with their weapons. Due to internal injuries, my son Tejinder Singh had fallen there and with the help of the residents of the Colony, he was brought to GGSMC & Hospital where Doctor Sahib declared my son "Brought dead" and the death of my son has been caused due to beatings given by Bony and other persons who accompanied him. The reason of the dispute is that Bony etc. used to stop sons of Lakhwinder Singh from sitting on the bench lying in front of my house. It is therefore requested that legal action may be taken against Bony and his 8/10 unknown associates. I have got recorded my statement to you which I have read, heard and the same is correct. Sd/ Baldev Singh aforesaid, attested Sd/- Guljinderpal Singh, Station House Officer, Police Station City Faridkot dated 07-10-2023. Police proceeding: Today undersigned INSP/SHO along with SI Sukhwinder Singh No. 326/PAP, ASI Gurdit Singh No. 481/Faridkot, ASI Akalpreet Singh 915/Faridkot, ASI Savinder Singh No. 583/Faridkot, Constable Jaswinder Singh No. 82/Faridkot, PHG Baldhar Singh 32424 while boarded in the Bolero vehicle No. PB-65-BA- 7387 whose driver was Hawaldar Parampal Singh 307/Faridkot, who were on patrolling for checking of suspected persons, reached in GGSMC & Hospital Faridkot from where it was learnt that in the Dream City Colony a quarrel has taken place in which one boy has died away and other persons had received injuries and I, Inspector/SHO along with my other associates reached in Emergency GGSMC Hospital where Doctor Sahib handed over Ruka doctory No. 3206 dated 06-10-2023 regarding death of Tejinder Singh son of Baldev Singh, resident of Dream City and father of Tejinder Singh has also met who got recorded his statement with me and his statement was written and read over and explained to him who after hearing and admitting the same to be correct, signed below his statement, to which I attested. From the aforesaid statement and Ruka Doctory, an offence Under Section 302/34/148/149 IPC I.P.C. is made out. The statement is being sent to the Police Station through ASI Savinder Singh No. 583/Faridkot for registration of case. After registration of case, its number may be informed. Special reports may be issued. I, INSP/SHO along with other police officials is

busy in the investigation. Sd/- Guljinderpal Singh, Station House Officer, Police Station City Faridkot dated 07-10-2023. Today Emergency GGSMC Hospital Faridkot AT: 01.20 AM. Today in Police Station: aforesaid statement After receiving the in Police Station, aforesaid case under aforesaid offences against aforesaid accused and unknown persons was registered and the case F.I.R. is being sent through ASI to the INSP on the spot. After preparing Special reports, the same are sent to Duty Magistrate Sahib and Senior Officers through ASI Nirmal Singh 264/Faridkot. PCR/FDK is being informed separately through W/M. Closed Rapat Number 03 dated 07-10-2023 Time: 01.50 A.M.”

4. The autopsy of Tejinder Singh was conducted. Thereupon, all three injuries were subjected to the medico-legal examination. Thereafter, the supplementary statement of Baldev Singh, was recorded, and one Tarsem Singh, who is the father of main accused-Sandeep Singh alias Mony was nominated as an accused vide DDR No.30, dated 07.10.2023. The statement of Lakhwinder Singh-injured/eyewitness was also recorded, who also pointed out his finger towards Tarsem Singh, and vide DDR No.40, offences under Sections 307, 452 and 323 IPC, were also added on dated 07.10.2023. Further, during the course of investigation, on the basis of statement of one Sandeep Singh alias Mony, a cross-case has been registered, and five persons were nominated as an accused, therein, the said cross-case, after conducting investigation, was cancelled by the prosecution agency, and the cancellation report was prepared on dated 17.10.2023.

5. The present petitioner-Gurwinder Singh was arrested on 09.10.2023.

6. He further draws attention of this Court towards an order dated 05.09.2024, passed in CRM-M-14926-2024, and connected petition, whereby the co-accused Amandeep Singh alias Goldy and Tarsem Singh alias Tarsem Lal alias Seema, have been granted the relief of regular bail by this Court, and the present petitioner is at co-equal pedestal, with the accused in those petitions.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

7. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, submits that the petitioner has not been named in the

FIR (*supra*), and no specific role has been attributed to him at the first instant. He further submits that his name has been cropped up during the investigation, and even the supplementary statement of the complainant was recorded, which *prima facie* casts doubt upon the story of the prosecution, and it seems to be a case of concoctions.

8. He also submits that there is no connection between the injury suffered by the deceased-Tejinder Singh, and the cause of his death.

9. He further draws attention of this Court towards the reply, dated 28.10.2024, filed by the prosecution agency to the instant petitions wherein, it has been mentioned that the cause of death of deceased-Tejinder Singh, is brain hemorrhage, and there is no evidence of any injury marks on the head of the deceased-Tejinder Singh. The relevant extract of the reply reads as under:-

“12. A) That during investigation, in final medical opinion of injured victim Lakhwinder Singh, the injury no. 1 was declared grievous in nature. Therefore enhancement of offence u/s 325 IPC has been made vide DDR No. 27 dated 07-12-2023.

B) With regard to a specific query regarding the cause of death of deceased Tejinder Singh, the concerned Surgeon mentioned that it is not possible to give opinion whether Brain Hemorrhage was due to some disease or Trauma to the head, as per postmortem record, there was no evidence of any external injury mark on the head of the person of Tejinder Singh. which indicated that possibility of the death of Tejinder Singh due to sudden homerhage with fear can not be ruled out, accordingly the offence u/s 302/307 IPC were not attracting to the facts of the case and investigation under section 302/307 IPC was dropped and enhancement of offence u/s 304 IPC made vide DDR No. 25 dated 04-01-2024.”

10. He in addition submits that as per the post-mortem report, there is only one abrasion on the right elbow of the deceased, which cannot in any manner has any nexus with the cause of death of Tejinder Singh.

11. He over and above, he submits that the petitioner has suffered incarceration of about 01 year and 01 month, as on today, and the trial is at initial stage, as no prosecution witness has been examined so far.

SUBMISSIONS OF THE LEARNED STATE COUNSEL AND COUNSEL FOR THE COMPLAINANT

12. *Per contra*, the learned State counsel assisted by learned counsel for the complainant, have vociferously opposed the grant of regular bail to the petitioner, and submit that the petitioner was duly identified during Test Identification Parade, which was conducted before the magistrate concerned, therefore, it has the evidentiary value equal to that of recording of statement under Section 164 Cr.P.C.

13. Learned counsel for the complainant further submits that now an application for alteration of charge, and for addition of Section 302 IPC, has been moved by the complainant, which is pending consideration.

14. He also submits that the injured/eyewitness, has categorically deposed regarding the role of the present petitioner, in as much as, he caused injuries to the deceased-Tejinder Singh. Therefore, the petitioner being a member of the unlawful assembly, does not deserve the relief of regular bail.

15. Learned State counsel has filed a custody certificate *qua* the present petitioner-Gurwinder Singh, which reflects that he has suffered incarceration of about 01 year and 01 month, as on today, and he is involved in many other criminal cases.

16. He in addition submits that in the final report, the prosecution has cited total 36 prosecution witnesses.

17. This Court has considered rival submissions made all the parties concerned, and is of the considered opinion that the instant petition is amenable for being allowed, and the present petitioner deserves to be released on regular bail.

18. The reason for forming the above inference emanates from the factum

that:- (i) it is not under dispute that the cause of death of deceased-Tejinder Singh, in the instant case is of brain hemorrhage, and there is no evidence of any external injury mark on the head of the person of said deceased, and because of the said reason, the prosecution has already proceeded to delete Section 302 IPC, and now the petitioner is facing trial under Section 304 IPC; (ii) whether, the injury which is caused by all the accused persons resulted in death of Tejinder Singh, is moot question, which is required to be adjudicated by the learned trial court concerned, at an appropriate stage of the trial; (iii) the petitioner-Gurwinder Singh has suffered incarceration of 01 year and 01 day, as on today, and it is not under dispute that the petitioner was arrested on 09.10.2023, and he is behind bars since then; (iv) in the final report the prosecution has cited total 36 witnesses; (v) the conclusion of the trial would take a long time.

FINAL ORDER

19. Considering the hereinabove made discussion, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioner. Therefore, 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 surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

20. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as is 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.

21. However, anything observed here-in-above shall have no effect on

the merits of the trial, and is only meant for deciding the present petitions.

- 22. All pending application(s) stand **disposed** of accordingly.
- 23. A photocopy of this order be placed on the file of the connected case.

November 13, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No