

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61120-2023
Date of decision : 28.02.2024

MUKESH ...Petitioner

Versus

STATE OF HARYANA ...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. S.K. Verma, Advocate
for the petitioner.

Mr. A.K. Sehrawat, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.003 dated 13.09.2019 registered for the offences punishable under Sections 302 of Indian Penal Code, 1860 at Police Station Bahu Akbarpur, District Rohtak.

2. As per the contents of the FIR it was alleged as under:

“xxxx I, Aniket son of Jaswant, am resident of village Singhpura Kalan. Today, I and my father were present at the house. At about 9 o'clock morning, Mukesh son of Dariya Singh village Singhpura Khurd came to our house and asked me about my father and talked with my father. Mukesh said to me that today he is taking his father for some work and my father went along with Mukesh. Mukesh earlier lived in our village. Nasheeb informed me that Mukesh have hit your father near the field of Suresh son of Fateh village Singhpura Khurd. He and Hasan are taking to PGI for treatment. I reached to PGI and asked to my father as how it happened. My father said that 3-4 days ago, an

argument took place with Mukesh about something. Due this Mukesh gave me lathi blow while taking to the fields of Singhpura Khurd. Two boys were standing with Mukesh, who run away from the spot on seeing coming Nasheeb son of Garib Dass and Hasan son of Jogender. My father succumbed to injuries during treatment. Legal action be taken against and his companions. Sd/ Aniket Mob. 9992391440”

3. Custody Certificate of the petitioner has been produced. As per the same by now the petitioner has undergone actual custody of more than 4 years, 5 months and 12 days.

4. Counsel for the petitioner submits that the information supplied by Aniket son of Jaswant (deceased) was based upon hearsay alleged to have been received from Naseeb. Naseeb as well as his brother Hasan appeared as PW-10 and PW-8 respectively. Both have not supported the case of prosecution.

5. Testimony of the Naseeb reads as under :

“Stated that about 3-4 years back, I received a telephonic information from Sarpanch of our village that my uncle Jaswant was lying in injured condition near drain no.8. Upon that information, I along with my cousin Hassan reached there and after lifting Jaswant, got him Copying admitted in PGIMS Rohtak. Later on Jaswant succumbed to his injuries do not know who caused him injuries.

(At this stage learned Public Prosecutor submits that since the witness is suppressing the truth, he may be allowed to put him Court. questions in the nature of cross examination. Heard. Request allowed)

Cross examination by Mr. Parveen Kumar, Public Prosecutor.

I was at my house, when I received the information and it was about 10.30 a.m. The doctor did not talk with Jaswant in my presence. On inquiry by the doctor, I told that Jaswant had quarreled with some one and in the said quarrel he had received injuries. Sarpanch told me about this fact. Name of the Sarpanch is Parmod. He did not tell me the names of the assailants and he told me that he had received a telephonic information from some one regarding the assault. Police inquired me about the incident and I also showed the place to the place from where Jaswant was lifted. I do not remember whether my statement was recorded by the Police. I used to visit drain No.8 usually. Accused Mukesh is my uncle in relation but is not my real uncle. I have seen and heard the contents of statement Ex.PN, but I never made any such statement before the police. I did not state before the police that on 13.09.2019, I along with Hassan had gone to Drain No.8 for some work and suddenly we heard the noise of screaming and we noticed that Jaswant was being caused injuries by accused Mukesh, with danda. (confronted with portions A to A-1 of Ex.PN where it is so mentioned). I also did not state before the police that upon seeing us, Mukesh fled the spot along with danda (confronted with portions B to B-1 of Ex.PN where it is so mentioned).

I came to know that accused Mukesh was arrested in connection with this case, at 7.00 p.m.

It is wrong to suggest that accused Mukesh caused injuries to Jaswant with danda and that upon seeing us, he fled away from the spot. It is also wrong to suggest that I have deposed falsely on account of having arrived at compromise with the accused being relative. It is wrong to suggest that I made statement Ex.PN before the police.

Cross examination by Mr. S.L.Kismissia, counsel for the accused.

Jaswant was a habitual drinker. I had also taken Jaswant to Kalanaur in connection with his treatment of liver. Considering his health condition, the doctor advised him not to take liquor. He was not talking at the time of his admission in

PGIMS Rohtak. Aniket complainant is doing private job in SUPVA University, near new Bus Stand, Rohtak. He used to leave his house at about 7.00/7.30 a.m. to attend his duty. On the day of occurrence, Aniket was not present at his house. If he had been present at his house, I must have taken him to the place of occurrence and then to PGIMS rohtak for admission of Jaswant.

6. Counsel further points out that as per the medico-legal report there was only one injury reported on the body of the deceased Jaswant whereas in the Post Mortem Report 17 injuries have been reported. He thus submits that whole of the story being put-forth by the prosecution is under cloud. Out of 23, the most material 15 witnesses already stand examined.

7. State Counsel is not in posititon to dispute the factual assertions made by counsel for the petitioner based on record. However, he submits that keeping in view the serious allegation levelled against the petitioner that on *danda* recovered from the petitioner human blood was found to be present, the petitioner does not deserve concession of bail.

8. Having heard rival contentions of the parties and after going through records of the case, so far as recovery of *danda* is concerned, the serological analysis of blood shows that though human blood was found thereon but the result remained inconclusive. Thus, without commenting on the merits of the case, keeping in view the nature of evidence and the fact that the alleged eye-witness has not supported the prosecution, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

February 28, 2024			(Pankaj Jain)
Dpr			Judge
	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No