

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

**Cr.M.P.(M) No.368 of 2020
Decided on: 30.04.2020**

Amandeep

.....petitioner

Versus

State of H.P.

..... respondent

.....
Coram

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioner :

**Mr. N.K. Thakur, Senior, Advocate, with
Mr. Divya Raj Singh, Advocate, for the
petitioner, through video conferencing.**

For the respondent :

**Mr. Anil Jaswal, Additional Advocate
General for the respondent,
through video conferencing.**

Jyotsna Rewal Dua, J (Oral)

Petitioner, who is presently in custody, has moved the instant bail petition, seeking regular bail under Section 439 of Criminal Procedure Code in FIR No.164/2018, dated 12.06.2018, under Section 302, 323, 324, 325 and 34 of the Indian Penal Code, registered at Police Station, Haroli, District Una, H.P.

2. I have heard learned counsel for the parties through video conference and gone through the status report filed today by the respondent-State. I have also gone through the statement of the complainant PW-8 Sh. Kashmiri Lal and that of injured PW-6 Sh.Davinder Singh recorded during trial, made available today through e-mail sent by learned senior Advocate for the bail petitioner.

3. The gist of the prosecution case against the bail petitioner as it comes out from the status report is that:-

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

3(a) An information about a fight and quarrel having taken place at the Drug Rehabilitation Center, Bhadsali, was received at police post Padonga on 12.06.2018. On arrival of the SHO Police Station Haroli at Drug Rehabilitation Centre Bhadsali, one Kashmiri Lal recorded his statement under Section 154 of Code of Criminal Procedure to the effect that he belongs to State of Punjab and had been admitted in the Drug Rehabilitation Centre on 17.05.2018. Besides him, there were around 20-21 other people admitted in the centre. During night of 12.06.2018, at around 3.00 A.M, he woke up on hearing noise. He saw Kuldeep Singh and Davinder Singh being beaten. Both were working as caretakers in the Centre. Kuldeep Singh was being given beatings by one Deepak Kumar with iron manhole cover, whereas, Davinder Singh was being beaten up by S/Sh Rajvinder Singh and Amandeep (bail petitioner). Emergency bell was pressed by Davinder Singh. On hearing the bell, Deepak Kumar alongwith some others admitted in the Centre, ran and were able to escape from the Centre. The in-charge of the Centre, reached the spot and brought the injured i.e. Kuldeep Singh and Davinder Singh to Regional Hospital Una for treatment.

3(b) On the basis of the above statement, instant FIR was registered against Amandeep (bail petitioner), Deepak Kumar, Rajvinder Singh and Harjinder Singh. Amandeep (bail petitioner), Rajvinder Singh and Harjinder Singh were arrested on 15.6.2018. Investigation was carried out. Both the injured persons, admitted in PGI Chandigarh were declared unfit for giving statements. Their MLCs were obtained. The MLC of Kuldeep Singh mentioned his injury as 'blunt' and that of Davinder Singh as 'Sharp Blunt'. Kuldeep Singh succumbed to injuries and died in PGI Chandigarh on 14.6.2018. His post-mortem report spelt out '*craniocerebral damage consequent to blunt trauma to head*', as cause of his death. Whereafter

Section 302 IPC was incorporated in the FIR. Out of the four accused, Deepak Kumar has been declared a proclaimed offender by the Court of learned Additional Chief Judicial Magistrate, Una. All the four accused in the FIR had caused injuries to Kuldeep Singh and Davinder Singh, in order to escape from the Drug Rehabilitation Centre. These injuries eventually led to the death of Kuldeep Singh. Challan was presented in the Court of learned Chief Judicial Magistrate Una, on 10.09.2018. The trial has commenced and ten out of thirty two witnesses have already been examined.

4. Learned senior Advocate for the petitioner has argued that the petitioner is innocent and has been falsely roped with the alleged offences. The allegation in the FIR against the bail petitioner was only in respect of injuries allegedly caused by him to one Davinder Singh and not to Kuldeep Singh, who later succumbed to his injuries in PGI Chandigarh. At the most, the case against the petitioner could only be under Section 323, 324 and 325 of the Indian Penal Code and no case under Section 302 of the Indian Penal Code can be made out against him. Learned senior Advocate also submitted that statements of all the material witnesses have been recorded in the trial. Neither the injured PW-6 Davinder Kumar nor the eye-witness Kashmiri Lal (PW-8) on whose statement instant FIR was registered, have supported the case of the prosecution insofar as the bail petitioner is concerned. Learned senior Advocate for the bail petitioner has further submitted that the petitioner undertakes to abide by all the conditions, which may be imposed upon him in case of grant of bail and that the bail petitioner will not influence the witnesses or temper with the prosecution evidence in any manner.

Per contra, learned Additional Advocate General submitted that in the instant case, trial has already commenced. Statement of ten out of thirty two

witnesses have already been recorded. He has fairly admitted that statements of all the material witnesses stand recorded. He has further informed that seven witnesses have been given up by the prosecution and the remaining witnesses are either officials or doctors/medical experts. Further trial might be delayed due to lockdown imposed on account of spread of Covid-19. The contention of learned Additional Advocate General is that the petitioner does not deserve grant of bail, as he is guilty of committing heinous offence under Section 302 of the Indian Penal Code.

5. As per the status report, the petitioner is in custody w.e.f. 15.6.2018. He has completed around two years in custody. The FIR was registered on the basis of complaint of one Kashmiri Lal stated to be an eye-witness of the incident. He, in his statement recorded under Section 154 Cr.PC had alleged that the bail petitioner was beating one Davinder Singh and not Kuldeep Singh. I have perused the statement of Davinder Singh recorded as PW-6 during the trial, wherein he does not name the bail petitioner as the perpetrator of the crime. I have also perused the statement of Kashmiri Lal (eye-witness) PW-8 recorded in the trial on 2.12.2019, wherein he has resiled from his statement recorded under Sections 161 and 154 of Cr.P.C. For the purpose of instant bail petition, it is not desirable to go deeper into these statements at this stage. Though offence has allegedly been committed by all the four accused together. However, it is a fact that Section 302 of the Indian Penal Code has been added in the FIR only on account of death of Kuldeep Singh. What was the role, if any, played by each of the accused in the incident, with what intention and framework of mind, is a matter of evidence to be led during trial and to be appreciated at an appropriate stage by the learned Court below. However, at this stage, considering the evidence, which has already come on record including statements of material witnesses, which, prima facie, do not implicate the bail

petitioner for the commission of heinous offence under Section 302 of the Indian Penal Code and considering the fact that the bail petitioner is behind the bars for the last about two years and the fact that further trial might get delayed due to lockdown imposed because of spread of Covid-19, therefore, in the present scenario, he cannot be kept behind bars for an indefinite period. Present petition is, therefore, allowed. Petitioner is ordered to be released on bail in the aforesaid FIR on his furnishing personal bond in the sum of Rs.75,000/- (Rupees Seventy Five Thousand only) with one local surety in the like amount to the satisfaction of the learned trial Court having jurisdiction, subject to the following conditions:-

- (i) The petitioner is directed to join the investigation of the case as and when called for by the Investigating Officer in accordance with law. He shall fully cooperate the Investigating Officer and will appear before him in the concerned police station as and when called in accordance with law.
- (ii). The petitioner shall not temper with the evidence or hamper the investigation in any manner whatsoever.
- (iii). The petitioner will not leave India without prior permission of the Court.
- (iv). The petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- (v). Petitioner shall attend the trial on every hearing, unless exempted in accordance with law.
- (vi). Petitioner shall inform the Station House Officer of the concerned police station about his place of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, E-mail, PAN Card, Bank Account Number, if any.

In case of violation of any of the terms & conditions of the bail, respondent-State shall be at liberty to move appropriate application for cancellation of the bail. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter. Any observation hereinabove shall not be taken as an expression on merits of the case and learned Trial Court shall decide the matter uninfluenced by any of observations made hereinabove.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

The registry is directed to send a copy of this order to the District and Sessions Judge concerned through e-mail. The competent Court/Authority attesting personal and surety bonds shall not insist upon certified copy of this order and shall download the same from the website of the High Court for purpose of office record.

Copy of this order be supplied by the Secretary/Private Secretary to the learned counsel for the parties through e-mail.

(Jyotsna Rewal Dua)
Judge

30.04.2020
(Rohit)