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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.830 of 2021

Reserved on: 05.05.2021

Date of Decision: 06.05.2021

Amit	Versus	...Petitioner
State of H. P.		...Respondent

Coram:
The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?¹NO

For the petitioner: Ms. Kiran Dhiman, Advocate.

For the respondent: Mr. Nand Lal Thakur, Additional Advocate General.

THROUGH VIDEO CONFERENCE

FIR No.	Dated	Police Station	Sections
86	28.06.2020	Manali, District Kullu, H.P.	452, 302, 323, 323, 504, 506 read with Section 34 of IPC

Anoop Chitkara, Judge.

The petitioner, incarcerated upon his arrest has come up before this Court under Section 439 CrPC, on the allegations of assaulting and pushing Rohit Paswan downhill, due to which he received head injury, and consequently died, has come up before this Court under Section 439 of CrPC, seeking bail.

¹ **Whether reporters of Local Papers may be allowed to see the judgment?**

2. Earlier, the petitioner had filed the following bail petitions:

(a) Bail application No.246 of 2020, filed by the applicant was dismissed by learned Additional Sessions Judge, Kullu, H.P. vide order 28.12.2020.

3. The bail petition is silent about criminal history, however, Ms. Kiran Dhiman, Ld. Counsel for the bail petitioner, states on instructions that the petitioner has no criminal past relating to the offences prescribing sentence of seven years and more, or when on conviction, the sentence imposed was more than three years. The status report also does not mention any criminal past of the accused.

4. Briefly, the allegations against the petitioner are that on 28.06.2020, Mukesh Paswan, resident of Bihar, who was working as labourer with a contractor, namely, Shri K.K. Mahajan, informed the police about the incident and upon such information the investigator recorded his statement under Section 154 of Cr.P.C. to the following effect:-

- (i) That he alongwith other labourers was working on a bridge being constructed near Sajla by Shri K.K. Mahajan, contractor. Alongwith complainant, Mukesh Paswan, other labourers, namely, Bhopal Paswan, Dharminder Paswan, Dhananjay Kumar, Mithilesh Paswan and Rohit Paswan (deceased) were also working.

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- (ii) On 23.06.2020 at 9:00 p.m., Mukesh Paswan, proceeded in his tipper for the security of the area and other persons went to sleep in their tin shed.
- (iii) At about 12.15 a.m. in the mid night, one Sumo came from Haripur side and driver tried to cross the bridge. However, the bridge was on the higher pedestal, as such, chamber of Sumo struck with the concrete, due to which, oil started leaking. After this, occupants of the vehicle alighted from the vehicle and even Mukesh Paswan came out of his tipper. They noticed that oil was leaking from the chamber of Sumo.
- (iv) Mukesh Paswan told them not to drive the vehicle from the bridge because it was under construction. On this the said persons told him that is he posted DC of the area and started hurling abuses to him. They told him that they will teach lesson to him and after that they returned in the vehicle.
- (v) After that, Mukesh Paswan visited the tin shed and informed the other persons about the occurrence. All of them woke up and were sitting in the shed.
- (vi) After fifteen minutes, all the three occupants of the vehicle, whose names later on revealed as Amit, Pritam and Ramesh, came there with sticks and said that labourers were doing Gundagardi in the area and started beating them.
- (vii) All labourers started running to save themselves from the beatings. These people caught hold of Rohit and he fell down in a Nallah (creek) 25-30 feet down. Complainant also fell down. However, he struck in the bushes and other two persons also ran away from the spot.

- (viii) Rohit informed the contractor and contractor reached on the spot after about half an hour and then rescued them from the creeks.
- (ix) On 24.06.2020, all these people compromised the matter between them.
- (x) However, on 28.06.2020 at mid night, Rohit became extremely unwell and he was brought to Mission hospital, where doctors told that he is dead.

Based on these allegations, the Police registered the FIR mentioned above.

5. Ld. Counsel for the petitioner argued that from the bare perusal of the charge sheet Annexure P-1, it is clear that on the intervening night of 23/24.06.2020 the said incident took place and the injury which the deceased had sustained, was not sufficient because on 24.06.2020, only X-Ray and CT Scan were conducted by the prosecution. Moreover, no grievous injury had been made out by the Medical Officer at that time, otherwise also, the postmortem report was based on some extraneous pressure and there may be other reasons for the death occurred after five days of the incident, as such, the petitioner cannot be liable for the said death. She further submitted that the incarceration before the proof of guilt would cause grave injustice to the petitioner and family. She has further argued about the delay in lodging FIR, lack of motive, presence of sudden provocation and that the matter was compromised.

6. On the contrary, the State contends that the Police have collected sufficient evidence against the bail petitioner and the co-

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accused. Another argument on behalf of the State is that the matter was initially compromised between the parties which prima facie proves the involvement and connects them with the crime and death.

Ld. Additional Advocate General further contended that crime is heinous, the accused is a risk to law-abiding people, and bail might send a wrong message to society.

7. A perusal of the bail petition reveals that the report under Section 173 of Cr.P.C stands filed and the documents were supplied to the accused under Section 207 Cr.P.C, but despite that, learned counsel for the petitioner chose to file fresh summary of challan coupled with post-mortem report. For the reasons best known to the petitioner, his counsel did not bring to the notice of the Court entire police report as received by him. To consider the arguments of learned counsel for the petitioner, this Court needs to go through the alleged compromise, statements of other witnesses and injured persons recorded under Section 161 of Cr.P.C. The Court also needs to go through the site plan of the spot from where they fell down. Thus, it will be highly unsafe to deny or allow the bail petition based on the skeleton documents, which have been placed by learned counsel for the petitioner. Once the accused receives documents under Section 207, Cr.P.C free of costs, then the State cannot be burdened again and again to bring the police file alongwith police officials, putting unnecessary burden on the infrastructure, that too in COVID phase. Requirement of police is more to maintain social

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distancing and law and order.

8. For the above reasons, this petition is dismissed with liberty reserved to the petitioner to file fresh petition, by annexing complete police report and it is clarified that the Registry shall not raise any objection about print quality and legibility of the documents annexed therewith.

The petition is dismissed with the aforesaid observations.

**Anoop Chitkara,
Judge.**

May 06, 2021
(*R.Atal*)

High Court