

CRM-M-22496-2022

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-22496-2022

Reserved on: 21-02-2023

Pronounced on: 27-03-2023

Jaswinder Singh @ Jassi

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. J.K. Goel, Advocate for the petitioner.

Mr. Sinish Girdhar, AAG, Punjab.

Mr. Himanshu Garg, Advocate and
Mr. Sandeep Kumar, Advocate for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0120	02.06.2020	Shimlapuri, Police commissionerate Ludhiana	307, 326, 324, 323, 148, 149, 506, 302, 120-B IPC (Section 302 IPC added later on)

1. The petitioner incarcerated due to his involvement in a brutal assault, carried out by him and some of his accomplices, culminating in death of an individual as per the above captioned FIR, has come up before this Court under Section 439 CrPC seeking bail.

2. In Note No. 2 and 3 of the bail petition, the accused declares criminal history of two cases. As per Para 7 of the Status Report filed by the State, the accused has the following criminal history:-

Sr.No.	FIR No.	Dated	Police Station	Sections
1	326	22.10.2018	Shimlapuri Ludhiana	307, 323, 324, 148, 149, 506 IPC, 1860
2	134	10.09.2019	Sadar Ludhiana	307, 332, 333, 253, 186, 120 IPC
3	98	09.05.2020	Shimlapuri, Ludhiana	323, 341, 506, 148, 149 IPC, 1860

CRM-M-22496-2022

3. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. While opposing the bail, the contentions on behalf of the State are that given the criminal past, the accused is likely to indulge in crime once released on bail.

REASONING:

5. The complainant and the deceased who were unarmed were waylaid by the petitioner and his other accomplices and attacked in an abhorrent manner as substantiated by the nature of injuries on their bodies. Nine out of ten injuries inflicted upon the complainant were from a sharp weapon and included amputation of a finger and multiple incisions. Ramandeep Singh accompanying the complainant received multiple injuries from sharp weapons that resulted in his death. The petitioner was specifically named in the FIR as one of the assailants. The complainant attributed some daat blows received by him to the petitioner. He also stated in the FIR that the petitioner and his accomplices attacked the deceased and inflicted serious injury on his head. After arrest, during interrogation, the police recovered the daat from the petitioner. Cumulatively, these facts succinctly point to petitioner's involvement in achieving the common object of killing the deceased for which he has been arraigned as an accused in the FIR.

6. The petitioner has criminal history of two attempt to murder cases. The petition does not instantiate any averment based on which this court is assured that if this recidivist is released on bail, then he shall not indulge in criminal behavior and will not abscond.

7. Causing death itself is cruel but if the cruelty causes death, the tables turn. When the physical assault is done with an element of cruelty, the parameters of bail also change. In re Kemmler, 136 U.S. at 436, [Cruelty] implies there is something inhuman and barbarous -something more than the mere extinguishment of life¹. When the offense is heinous and the crime is brutal, cruelty becomes one of the factors in granting or refusing bail. The impact of individuals who act with cruelty is devastating not only for those on whom the direct harm and pain is inflicted but also on a systemic level. Cruel individuals contribute to sustain the greater deficiencies of society like gender, economic and social inequalities. Once the courts form a prima facie opinion that the accused acted with cruelty, then such an accused ordinarily should not be granted bail, and if the courts still deem it appropriate to grant, then it must be after

¹[Refer: Matthew Lippman, Contemporary criminal law: concepts, cases, and controversies, University of Illinois at Chicago, 51, SAGE, California, USA, fourth edition, 2016].

CRM-M-22496-2022

specifying the reasons for such an indulgence. In the present case, an analysis of the allegations, injuries, and evidence collected points out that the accused and some of his accomplices acted with ferociousness and total lack of mercy. Thus, does not warrant the grant of bail to the accused.

8. A perusal of the bail petition and the documents attached, prima facie points towards the petitioner's involvement and does not make out a case for bail. The petitioner's counsel had further argued that he is entitled to bail on grounds of parity. However, his role is well defined and he is neither entitled to bail on merits nor on the grounds of parity. Any further discussions are likely to prejudice the petitioner; this court refrains from doing so. Furthermore, the trial is at an advance stage and five witnesses have already testified.

POST-REASONING:

9. To further assess the worldwide view on bail when the assault was laced with cruelty, the use of Artificial intelligence platform which has been trained with multitudinous data was made. The following question was put to ChatGPT Open AI [<https://chat.openai.com/chat>]:

10. What is the jurisprudence on bail when the assailants assaulted with cruelty?

Response of ChatGPT:

The jurisprudence on bail for cases where the assailants have assaulted with cruelty will depend on the specific circumstances of the case and the laws and regulations of the jurisdiction where the case is being tried. However, in general, if the assailants have been charged with a violent crime that involves cruelty, such as murder, aggravated assault, or torture, they may be considered a danger to the community and a flight risk.

In such cases, the judge may be less inclined to grant bail or may set the bail amount very high to ensure that the defendant appears in court and does not pose a risk to public safety. The severity of the assault, the defendant's criminal history, and the strength of the evidence against them are all factors that a judge will consider when deciding whether to grant bail.

It is important to note that the presumption of innocence is a fundamental principle of the justice system, and all defendants are entitled to bail unless there are compelling reasons to deny it. Therefore, even in cases where the assailants have assaulted with cruelty, they may still be granted bail if the judge determines that they do not pose a risk to the community or a flight risk.²

11. Any reference to ChatGPT and any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments. This reference is only intended to present a broader picture on bail jurisprudence, where cruelty is a factor.

²<https://chat.openai.com/chat>

