

**2023 STPL(WEB) 3 HP  
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE SATYEN VAIDYA, J.)

**JOGINDER KUMAR**

Petitioner

*VERSUS*

**STATE OF HIMACHAL PRADESH**

Respondent

Cr. M.P.(M) No. 1563 of 2023-Decided on 04-07-2023

**Criminal, Bail, Murder**

**Indian Penal Code, 1860 – Section 34, 201, 302, 392 – Code of Criminal Procedure, 1974 – Section 439 – Bail – Murder – Murder Case** – Consideration of case - The cause of death of deceased Daya Ram is still unknown despite lapse of more than seven months. Though, the MLC of deceased Shri Daya Ram and subsequent postmortem report records an injury on the head, but there is no explanation for cause of such injury. Even the magnitude of such injury is still unknown. However, as suggested by postmortem report, the skull was found intact without any fracture. Only a minute subarachnoid hemorrhage was found present on the left parietal region. On the basis of material on record, there is no allegation against the petitioner that he had acted in an inhuman and cruel manner. No criminal antecedent has been attributed to the petitioner. Bail granted with conditions

(Para 8, 9)

Advocate(s): For the petitioner: Mr. Prashant Sharma, Advocate.

For the respondent: Ms. Sharmila Patial, Additional Advocate General. ASI Lekh Ram, P.S. Kot Kehloor, District Bilaspur, H.P. present in person, alongwith record.

**JUDGMENT**

**Satyen Vaidya, Judge**-A case under Sections 302, 341, 323, 147, 149, 504, 506 and 201 of the IPC has been registered at Police Station Kot-Kehloor, District Bilaspur, H.P vide FIR No. 105 of 2022 dated 22.11.2022. The foundation for registration of above FIR was a statement under Section 154 Cr.P.C., of one Shri Daya Ram (now deceased). It was alleged that on 21.11.2022 at about 9.30 P.M. complainant was present in his house and had received a phone call from Subhash Chand informing that Keshav Dutt and Ram Kumar alias Manu were inflicting blows upon Naresh Kumar (son of complainant) with sticks. The complainant with his other son Dinesh Kumar proceeded towards the house of Subhash Chand and when they reached near cow shed of Joginder Pal, they were waylaid by Joginder Pal and his two sons Shashi Pal, Keshav Dutt nephew Ram Kumar alias Manu, wife Ramana Devi and his daughter-in-law. He further complained that petitioner and his nephew Ram Kumar alias Manu inflicted blows on left leg of complainant with sticks. Shashi Pal, Keshav Dutt, Ramana Devi and daughter in-law of petitioner gave beatings to Dinesh Kumar. They were saved by intervention of Subhash Chand and his son Monu. In the result, complainant had received injuries on his left leg and his son Dinesh Kumar had received injuries on head. Both of them went to Civil Hospital Ghawandal for treatment and found Naresh Kumar, the other son of complainant already under treatment there. Statement of Daya Ram was recorded on 22nd November, 2022.

2. In the evening on 22.11.2022, the police received the information that Daya Ram had died at Regional Hospital Una. His postmortem was conducted. Though the challan in the case stands filed, the opinion regarding the cause of death of Daya Ram has still been kept pending till receipt of report from “RFSL” and Histopathology laboratory.

3. The petitioner has made a prayer for grant of bail on the grounds that the evidence collected by the Police does not suggest that deceased Daya Ram had died on account of injuries allegedly inflicted upon him by petitioner. The only allegation inferable against petitioner from the statement made by Daya Ram to the police before the death is that the petitioner had inflicted injury on the left leg of Daya Ram with a wooden stick. It is further submitted that petitioner has been falsely implicated with a purpose to settle the scores as the complainant side was having inimical relations towards him and his family members. As per petitioner, he has no criminal antecedents. He is a permanent resident of Village and Post Office Saloa, Tehsil Shri Naina Devi Ji, District Bilaspur, H.P. Petitioner has undertaken to abide by all the terms and conditions as may be imposed against him.

4. On the other hand, learned Additional Advocate General has opposed the prayer on the ground that the petitioner is involved in a serious and heinous crime. The investigation is still going on and in case of release of petitioner on bail, there is every likelihood that he may tamper with the prosecution evidence.

5. I have heard learned counsel for the parties and have also gone through the entire record carefully.

6. The gravity and seriousness of accusations, undoubtedly, are relevant factors for consideration while deciding the petition for bail. However, only allegations of commission of heinous crime are not sufficient to deny the bail. The court has also to assess the nature of evidence and other material collected by the investigating agency in support of such accusations.

7. The status report filed on behalf of the respondent-State reveals that late Sh. Daya Ram had given his statement under Section 154 of the Cr.P.C. to the police on 22.11.2022, whereas the alleged incident was of previous night. It means that late Sh. Daya Ram was in a fit state of mind to make the statement. As per his statement, petitioner had inflicted the blows on his left leg with a wooden stick.

8. The cause of death of deceased Daya Ram is still unknown despite lapse of more than seven months. Though, the MLC of deceased Shri Daya Ram and subsequent postmortem report records an injury on the head, but there is no explanation for cause of such injury. Even the magnitude of such injury is still unknown. However, as suggested by postmortem report, the skull was found intact without any fracture. Only a minute subarachnoid hemorrhage was found present on the left parietal region. Till date even this injury has not been suggested or opined to be fatal. As noticed above, Shri Daya Ram had not stated anything about any injuries having been inflicted on his head.

9. The aforesaid observations have been made only to assess the seriousness and gravity of allegations against the petitioner and material collected by investigating agency during the investigation. On the basis of material on record, there is no allegation against the petitioner that he had acted in an inhuman and cruel manner. There are allegations and counter allegations of inimical relations between the parties, which always can be used as a double-edged weapon.

10. The petitioner has already suffered custody since 24.11.2022. No fruitful purpose shall be served by detaining the petitioner in custody for indefinite period. Pre-trial incarceration cannot be ordered as a matter of rule. The challan has already been filed on 17.3.2023. As per police report, the case is now fixed for consideration on framing of charges before learned trial Court on 18.7.2023.

11. Petitioner is permanent resident of Village and Post Office Saloa, Tehsil Shri Naina Devi Ji, District Bilaspur, H.P. and there is no likelihood of his absconding and fleeing from the course of justice. No criminal antecedent has been attributed to the petitioner.

12. The apprehension expressed by the learned Additional Advocate General regarding possibility of petitioner tampering with the prosecution evidence, though uncorroborated, can be taken care of by imposing appropriate terms against the petitioner.

13. Keeping in view the facts and circumstances of the case, the petition is allowed and the petitioner is ordered to be released on bail in case FIR No. 105 of 2022, dated 22.11.2022 under Sections 302, 341, 323, 147, 149, 504, 506 and 201 of the IPC registered at Police Station Kot-Kehloor, District Bilaspur, H.P. subject to his furnishing personal bond in the sum of Rs. 50,000/- with one surety in the like amount, to the satisfaction of learned Trial Court. This order, however, shall be subject to the following conditions:

(i) That the petitioner shall not indulge in any criminal activity and in the event of breach of this condition, the bail granted to the petitioner in this case, shall automatically be cancelled.

(ii) That the petitioner shall not leave the territory of India without express leave of Trial Court during the Trial.

(iii). That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with the prosecution evidence.

(iv) That the petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.

14. Any observation made in this order shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove.

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