

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Date of Decision: March 16, 2016

1. CRM M-285 of 2016
Bikramjit Singh
.....Petitioner

Vs.
State of Punjab
.....Respondent

2. CRM M-1063 of 2016
Jaskaran Singh
.....Petitioner

Vs.
State of Punjab
.....Respondent

3. CRM M-1071 of 2016
Wassan Singh
.....Petitioner

Vs.
State of Punjab
.....Respondent

4. CRM M-1143 of 2016
Satnam Singh Manawan
.....Petitioner

Vs.
State of Punjab
.....Respondent

5. CRM M-2021 of 2016
Bhai Amrik Singh
.....Petitioner

Vs.
State of Punjab
.....Respondent
6. CRM M-2480 of 2016
Paramjit Singh
.....Petitioner

Vs.
State of Punjab
.....Respondent
7. CRM M-4755 of 2016
Gurjinder Singh
.....Petitioner

Vs.
State of Punjab
.....Respondent
8. CRM M-4811 of 2016
Pappalpreet Singh
.....Petitioner

Vs.
State of Punjab
.....Respondent
9. CRM M-5564 of 2016
Dhian Singh
.....Petitioner

Vs.
State of Punjab
.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.D.S. Pheruman, Advocate for the petitioners in
CRM M-285 and M-2480 of 2016.

Mr.Simrajit Singh, Advocate for the petitioners in
CRM M-1063, M-1071, M-1143, M-4755, M-4811 and M-
5564 of 2016.

Mr. R.S. Bains, Advocate for the petitioner in
CRM M-2021 of 2016.

Mr. K.S. Nalwa, Addl.A.G., Punjab.

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M.M.S. BEDI, J.

This order will dispose of following petitions for grant of
regular bail:-

- 1) CRM M-285 of 2016-Bikramjit Singh Vs. State of Punjab
- 2) CRM M-1063 of 2016-Jaskaran Singh Vs. State of Punjab.
- 3) CRM M-1071 of 2016-Wassan Singh Vs. State of Punjab.
- 4) CRM M-1143 of 2016-Satnam Singh Manawan Vs. State of
Punjab.
- 5) CRM M-2021 of 2016-Bhai Amrik Singh Vs.State of Punjab
- 6) CRM M-2480 of 2016-Paramjit Singh Vs. State of Punjab.
- 7) CRM M-5564 of 2016-Dhian Singh Vs. State of Punjab.

and following petitions for grant of anticipatory bail:-

- 1) CRM M-4755 of 2016-Gurjinder Singh Vs. State of Punjab.
- 2) CRM M-4811 of 2016-Pappalpreet Singh Vs.State of Punjab

Since all the petitions for bail/ anticipatory bail arise out of the
same FIR No. 151 dated November 12, 2015, under Sections 124-A, 153-A,
153 B, 115, 117, 120-B, 188 of IPC and Section 13 (1) of the Unlawful
Activities (Prevention) Act, 1967, Section 66-F of the Information

Technology Act, registered at Police Station Chattiwind, District Amritsar, I propose to decide all the petitions with a common order.

The FIR was registered on November 12, 2015 on the basis of the report of SHO Police Station, Chattiwind, Amritsar, to the effect that on November 10, 2015 one conference named 'Sarbat Khalsa-2015' was organized by Simranjit Singh Maan, Dhian Singh Mand, Jaskaran Singh Kahan Singh Wala, Mohkam Singh and Gurdeep Singh Bhatinda which was attended by the petitioners alongwith other leaders including Satnam Singh Manawan, Wassan Singh Jaffarwal, Dr. Gurjinder Singh Daduwal, Amrik Singh Ajnala, Surinder Singh Thekriwal, Joga Singh Maloke, Pappalpreet Singh Mardi, Resham Singh USA, Surjit Singh USA, Paramjit Singh UK, Gurbhej Singh USA, Harinder Singh USA, Baljinder Singh Italy and others. The organizers in connivance with each other made certain speeches in order to breach the unity and integrity of the country. In the said conference, a terrorist Jagtar Singh Hawara was declared as Jathedar of Shri Akal Takhat Sahib, Wadhawa Singh Babbar, head of terrorist organization Babbar Khalsa International in connivance with secret agencies of Pakistan, made an attempt to instigate the youth to commit the terrorist activities. Slogans were raised spreading hateful sentiments between communities. Flags were waived against the country. Learned Additional Sessions Judge, Amritsar has dismissed the bail applications of the petitioners.

It is not out of place to observe here that two petitions bearing CRM M-3180 of 2016-Baljit Singh Daduwal Vs. State of Punjab and CRM

M-44335 of 2015-Mohkam Singh Vs. State of Punjab, for grant of regular bail have already been allowed by this Court. The speech of Baljit Singh Daduwal was minutely taken into consideration while granting him bail to form an opinion that prima facie his speech was not an attempt of waging or abetting to wage war against the Government of India or promoting enmity against different groups. Mohkam Singh who is one of the organizers of the congregation ‘Sarbat Khalsa-2015’ has been granted concession of bail on account of no specific words having been attributed to him.

So far as petitioners Bikramjit Singh, Jaskaran Singh, Wassan Singh, Satnam Singh Manawan, Bhai Amrik Singh, Paramjit Singh and Dhian Singh are concerned, they have been in custody w.e.f. the dates mentioned hereinbelow and the recoveries effected from them are also mentioned hereinbelow:-

Name of the petitioner	Date of arrest	Recovery
Bikramjit Singh	24.11.15	7 khalistani flags and 3 khalistani posters. Mobile phone.
Jaskaran Singh	16.11.15	Nil
Wassan Singh	25.11.15	Nil
Satnam Singh Manawan	16.11.15	Nil
Bhai Amrik Singh	23.11.15	Nil
Paramjit Singh	6.12.15	5 khalistani flags

		and 2 kahlistani posters
Dhian Singh	19.11.15	22 khalistani posters

With the assistance of learned counsel for the petitioners and Mr. K.S. Nalwa, Additional Advocate General, Punjab, I have carefully gone through the role attributed to the petitioners. The role which has been attributed to the petitioners is also mentioned hereinbelow:-

Name of the petitioner	Role attributed
Bikramjit Singh	Not named in the original FIR. Named by Amrik Singh in his disclosure statement. Allegedly declared on face book a cash reward of Rs.20 lacs for beheading CM Punjab.
Jaskaran Singh	Alleged to be the Stage Secretary and one of the main organizers.
Wassan Singh	He allegedly read out resolution No.12 of Sarbat Khalsa 1986 and later on provoked 8-10 Sikh youth armed with bare swords.
Satnam Singh Manawan	Alleged to be the Stage Secretary and later on provoked 8-10 Sikh youth armed with bare swords.

Bhai Amrik Singh	He was allegedly declared Jathedar, distributed flags and posters and later on provoked 8-10 Sikh youth armed with bare swords.
Paramjit Singh	Not named in the original FIR. He is alleged to be gathering masses, arranging of pandal and propaganda material.
Dhian Singh	Alleged to be a former terrorist and openly supporting Jagtar Singh Hawara, Narain Singh Chaura and Wadhwa Singh Babbar.

The congregation was allegedly convened on November 10, 2015. No ban was imposed by any local authority. No person was arrested on said date for committing breach of peace but FIR was registered on November 12, 2015. It is also pertinent to observe that the congregation ‘Sarbat Khalsa-2015’ has not been declared as unlawful association under Section 2 of the Unlawful Activities (Prevention) Act, 1967, for short ‘the Act’. An ‘unlawful association’ is described in Section 2 (p) of the Act. The unlawful activity has been described in Section 2 (o) of the Act, which reads as follows:-

“2 (o) “**unlawful activity**”, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-

- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession ;
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
- (iii) which causes or is intended to cause disaffection against India.”

The term ‘unlawful activity’ is associated with the term ‘unlawful association. An association to be an unlawful association has to be notified in the official gazette as per requirement of Section 3 of the Act which is subject to approval by a Tribunal constituted by Central Government under Section 5 of the Act. It will certainly be a debatable issue whether the activity alleged against the petitioners as members of unlawful association is an “unlawful activity” punishable under Sections 10 to 13 of the Act.

It is also interesting to note that during the course of investigation statements of three PWs, namely, ‘DS’, ‘RS’ and ‘TS’ (names intentionally concealed on the request of State counsel) were recorded on November 29, 2015 to the effect that 13 resolutions of the year 1986 of ‘Sarbat Khalsa’ were read out in the congregation. It is recorded that the said PWs have stated that Sikh community had not got justice for the

incident of 1984 and Joga Singh Mohla had stated that there has to be armed struggle and rule has to be snatched and slogans were raised against Indian Government which had the effect of feeling of hatred and dissatisfaction. People had raised slogans of 'Khalistan Zindabad' and the flags of Khalistan were unfurled. The said statement are only against Joga Singh Mohle. There was no other name mentioned by the said PWs. The statements of said three witnesses were again recorded on December 5, 2015 in the shape of supplementary statements. The supplementary statements of these PWs alongwith few more statements were recorded to the effect that after the congregation, the petitioners had provoked 8/10 Sikh youth armed with bare swords to fight for Khalistan and eliminate persons of other community from Punjab. The effect of supplementary statements recorded after about 1 month of the incident would be a debatable issue.

It is also not out of place to observe here that Jaskaran Singh has been involved in two other cases i.e. FIR No. 180 dated December 6, 2015 under National Highway Act, registered at Police Station Makhu, District Ferozepur for his activities of October 15, 2015 and October 25, 2015 and FIR No. 198 of November 16, 2015 under Sections 295, 427, 506, 511, 153-A, 120B, 148, 149 IPC, read with Sections 25/54/59 of the Arms Act registered at Police Station Kotwali Amritsar pertaining to the same incident of October 10, 2015.

Similarly petitioner Satnam Singh Manawan has also been involved in two cases i.e. FIR No. 198 of November 16, 2015 under Sections

295, 427, 506, 511, 153-A, 120B, 148, 149 IPC, read with Sections 25/54/59 of the Arms Act registered at Police Station Kotwali Amritsar pertaining to the same incident dated October 10, 2015 and FIR No. 155 dated November 29, 2015 under Sections 283, 341, 431, 427, 188, 148, 149 IPC, and National Highway Act, Police Station Harike, for an incident dated October 15, 2015.

Similarly petitioner Amrik Singh Ajnala has been nominated as an accused in three more cases i.e. FIR No. 190 dated November 16, 2014, under Sections 307, 324, 427, 295 IPC and Sections 25/27 of the Arms Act registered at Police Station Chabbal, District Tarn Taran for the incident of November 16, 2014, FIR No. 156 dated July 29, 2014, under Sections 308, 342, 336, 506, 148 IPC and Section 25 of the Arms Act, registered at Police Station Chabbal, District Tarn Taran for an incident of July 10, 2015 and FIR No. 192 dated October 14, 2015, under Sections 307, 353, 332, 333, 382, 286, 120-B IPC, registered at Police Station City Kotkapura besides the present case.

Similarly petitioner Paramjit Singh has been involved in two other cases i.e. FIR No. 198 of November 16, 2015 under Sections 295, 427, 506, 511, 153-A, 120B, 148, 149 IPC, read with Sections 25/54/59 of the Arms Act registered at Police Station Kotwali Amritsar and FIR No. 120 dated December 19, 2015, under Section 420 IPC, registered at Police Station Majitha.

So far as petitioner Gurjinder Singh is concerned, he has been nominated as accused in five more case which are as follows:-

- i) FIR No. 198 dated November 16, 2015 under Sections 295, 427, 506, 511, 153-A, 120B, 148, 149 IPC, read with Sections 25/54/59 of the Arms Act registered at Police Station Kotwali Amritsar.
- ii) FIR No. 128 dated December 8, 2015, under Sections 379, 427 IPC read with Sections 32/33 of the Forest Act, registered at Police Station Chabbal, District Tarn Taran.
- iii) FIR No. 226, dated December 6, 2015, under Sections 283, 341, 431, 188, 148, 149 IPC, registered at Police Station Sadar Tarn Taran.
- iv) FIR No. 155, dated November 29, 2015, under Sections 283, 341, 431, 427, 188, 148, 149 IPC, read with Section 8B of National Highway Act, registered at Police Station Harike, Tarn Taran.
- v) FIR No. 327, dated December 2, 2015, under Sections 283, 341, 431, 427, 379, 148, 149 IPC registered at Police Station City Tarn Taran.

Similarly petitioner Dhian Singh has also been involved in two other cases i.e. FIR No. 198 dated November 16, 2015 under Sections 295, 427, 506, 511, 153-A, 120B, 148, 149 IPC, read with Sections 25/54/59 of the Arms Act registered at Police Station Kotwali Amritsar and FIR No. 180

dated December 6, 2015, under National Highway Act registered at Police Station Makhu District Ferozepur in which he is yet to be arrested.

I have considered the nature of allegations against the petitioners in context to the law laid down in **Kedar Nath Singh Vs. State of Bihar**, AIR 1962 SC 955, wherein the scope of Section 124 A IPC in context to the provisions of Article 19 (1) (a) of the Constitution of India was considered by the Apex Court and it was held as follows:-

“The provisions of the sections read as a whole along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have tendency to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however, strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct

balance between individual fundamental rights and the interest of public order.”

The Apex Court in **Shreya Singhal Vs. Union of India**, (2015)

5 SCC 1 while considering the expression ‘freedom of speech and expression’, has observed as follows:-

“13. This leads us to a discussion of what is the content of the expression “freedom of speech and expression”. There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc.”

So far as raising of slogans of Khalistan and anti-national slogans are concerned, it will certainly be a debatable issue whether any offence is made out in view of the judgment of Supreme Court in **Balwant**

Singh Vs. State of Punjab, AIR 1995 SC 1785 and **Gurjatinder Pal Singh Vs. State of Punjab**, 2009 (3) RCR (Crl.) 224, wherein it was held that the comments criticizing government action would fall within the ambit of ‘freedom of speech and expression’ but when the words written or spoken have pernicious tendency or when there is intention of creating public disorder or disturbance of law and order, steps are required to be taken in the interest of public order. Petitioners Bikramjit Singh, Jaskaran Singh, Wassan Singh, Santam Singh, Bhai Amrik Singh, Paramjit Singh and Dhian Singh have been in custody w.e.f. November and December 2015. It will certainly be a debatable issue whether the role attributed to the petitioners would fall under their fundamental right of ‘freedom of speech and expression’ enshrined under Article 19 (1) (a) of the Constitution of India or it would be an offence under Sections 124-A and 153 B IPC. It is not out of place to observe here that in **Hardik Bharatbhai Patel thro. his father Bharatbhai Narsibhai Patel Vs. State of Gujarat and others**, 2016 (1) RCR (Crl.) 542, it has been held that for constituting offence under Sections 153 A and 153 B IPC, promotion of feeling of enmity, hatred or ill-will between different religious or racial or language or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or groups without any reference to any other community or group, would not attract Sections 153 A and 153 B IPC.

In the present case, no statement of any person has been recorded till date belonging to any other community that feeling of enmity, hatred or ill-will was felt by any other group or community. A perusal of police file indicates that the congregation 'Sarbat Khalsa' was convened in presence of Sri Guru Granth Sahib. It will certainly be a debatable issue during the course of trial whether ingredients of sedition and elements of promoting enmity between different groups are made out.

Without expression of any opinion on merits, the petitions bearing CRMs M-285, M-1063, M-1071, M-1143, M-2480 of 2016 and M-5564 of 2016 are allowed. Petitioners Bikramjiit Singh (CRM M-285 of 2016), Jaskaran Singh (CRM M-1063 of 2016), Wassan Singh (CRM M-1071 of 2016), Santam Singh (CRM M-1143 of 2016), Paramjit Singh (CRM M-2480 of 2016) and Dhian Singh (CRM M-5564 of 2016) are ordered to be released on bail on their furnishing bail bonds/ surety bonds to the satisfaction of CJM, Amritsar.

So far as petitioners Gurjinder Singh and Pappalpreet Singh are concerned, their petitions bearing CRM M-4755 of 2016 and CRM M-4811 of 2016 are also allowed and it is ordered that in case of arrest of petitioners Gurjinder Singh and Pappalpreet Singh they will be released on bail to the satisfaction of the arresting officer subject to the conditions that they will join investigation as and when required by the police and that they will not tamper with the evidence or hamper the investigation in any manner.

Petitioner Bhai Amrik Singh had been granted concession of interim bail on health grounds. Petition bearing CRM M-2021 of 2016 is also allowed. Petitioner Bhai Amrik Singh is ordered to be released on bail on his furnishing bail bonds/ surety bonds to the satisfaction of CJM, Amritsar.

It is further observed that the petitioners have been granted bail subject to a condition that they would not indulge in any activity during the pendency of the trial which would constitute sedition or promoting enmity between different groups.

Nothing said in this order is meant to be read as an expression of opinion on merits of the case.

March 16, 2016
sanjay

(M.M.S.BEDI)
JUDGE