

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

**CRM-M-17669-2019
Reserved on : 20.05.2019
Pronounced on : 22.05.2019**

Joga Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. S. P. S. Sidhu, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana,
assisted by ASI Shish Pal.

Mr. S. K. Aggarwal, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J.

The petitioner prays for grant of anticipatory bail in FIR No. 454 dated 11.12.2018, registered under Sections 302, 307, 341 and 34 of the IPC at Police Station Ambala City, District Ambala.

For a ready reference, the FIR is reproduced below:

“Statement of Ranjit Kaur wife of Sarup Singh, caste Jat resident of Dera Layal Patti Jattan, New Sabzi Mandi Ambala City. Stated that I am resident of above said address and I have one daughter and one son. My son Daler Singh is in service at Bijwara (Andhra Pradesh). Our residential house is near G. T. Road. We have hired a meson for construction of Kothi and our one plot is in possession of Surinder Pal Singh son of Hazura Singh resident of Layalpura Dera. This plot is our joint property and same is in the name of my husband Sarup Singh.

Surinder Pal Singh has possession of the plot and he was asking transfer in his name and thus, keeping grudge, today on 11.12.2018 a about 8.30 a. m. my husband was going towards fields on his tractor to take fodder and I along with my daughter Darshandeep Kaur were tying cattles near the main gate. In the meantime, Surinderpal Singh and his son came near the tractor of my husband and stopped his tractor. Surinderpal Singh was armed with axe and he gave axe blow from the right side at the neck of my husband with intention to murder him. He continuously gave axe blow to my husband when he was sitting on tractor. His son namely Joga Singh was standing with his father and stopped the tractor and he was raising lalkara by saying that he be not spared. I and my daughter raised alarm and came running to rescue him. Then Surinderpal Singh with his axe and alongwith his son Joga Singh ran away from the spot. Then I took my husband in the vehicle of my neighbour and with the help of my daughter to Govt. Hospital Ambala. Doctor gave his first aid and sent him in Ambulance by referring GMCH, Sector 32, Chandigarh. Gurmeet Singh Meson has witnessed the occurrence. My husband is under treatment at GMCH, Sector 32, Chandigarh and he is unconscious. Surinderpal Singh and his son Joga Singh badly injured my husband. Thus, legal action be taken against them. My statement has been recorded at GMCH, Sector 32, Chandigarh, same is correct. Action be taken.

Sd/- Ranjit Kaur”

Later on, Sarup Singh, husband of the complainant, died and Section 302 IPC was added in the FIR.

Learned counsel for the petitioner has argued that during investigation, the police has conducted investigation and as per the same,

the petitioner was not found to be present at the spot and the investigation was verified by an officer of the rank of A.S.P, Ambala.

Learned counsel for the petitioner has further argued that on the basis of the tower location of the cell phone of the petitioner, it was at a distance of 8 Kms. in the vegetables market and in the inquiry, certain witnesses have deposed in favour of the petitioner that he was present in vegetables market.

Learned counsel for the petitioner has further submitted that as per the aforesaid inquiry, the petitioner was found to be innocent and he was kept in column No. 2 while submitting the report under Section 173 Cr.P.C., whereas his father/co-accused Surinder Pal Singh was found to be prime accused.

It is further submitted that thereafter, the trial Court in exercise of its power under Section 190 Cr.P.C. has summoned the petitioner as an additional accused, vide order dated 04.04.2019 passed by the Chief Judicial Magistrate, Ambala (Annexure P-2). The operative part of the order, summoning the petitioner, reads as under:

“6) In order to ascertain the reason/basis for exonerating Joga Singh by the police this court had called for and gone through the police file which shows that in the investigation conducted by SI Balbir Singh the fact that Joga Singh was not accompanying the accused Surinder Pal Singh came to be put forth in the statements of Bhupinder Singh, Chhapinder Singh and Gobind Singh, who are family members of the accused Surinder Pal Singh and Chhapinder Singh is alleged to have made a phone call on the mobile phone of Joga Singh at about 8.00 A.M. informing him that his father had inflicted

injuries on the person of Saroop Singh and called him on the spot while the said persons are alleged to have stated that at the relevant time when the phone call was made Joga Singh had disclosed his location as at Manav Chowk where he had gone on his vehicle to load/unload vegetables from the New Subzi Mandi. Thereafter, SI Balbir Singh is shown to have recorded the statement of Sucha Singh on 02.01.2019 who stated that on the day of occurrence he had called Joga Singh on his vehicle of make Tata Super No.HR-37D-0404 who came to him at New Subzi Mandi, Ambala at about 7.00 A.M. and he had hired his vehicle for loading vegetables from different shop owners and at about 8.00 A.M. Joga Singh alongwith his vehicle reached at Manav Chowk where the vegetables were unloaded which took about one hour and in this manner he stated that from 7.00 A.M. to 9.00 A.M. Joga Singh alongwith his vehicle remained with him. Statements of shop owners from whom the vegetables were purchased by Sucha Singh namely Amar Nath, Yash, Rajesh Kumar are also shown to have been recorded by SI Balbir Singh. On the basis of their statements and after obtaining the call detail record and tower location record of mobile phone of Joga Singh, SI Balbir Singh was of the opinion that Joga Singh was not present on the scene at the time of occurrence and he had been falsely implicated. The said witnesses were also produced before the senior police officials i.e. Inspector Ajit Singh, the then SHO, police station concerned and he is also shown to have verified the facts from the said witnesses which they are alleged to have reiterated. Meanwhile, Rajinder Pal Singh who had taken the victim to hospital and who in his initial statement had clearly stated that he had reached on the spot only subsequently, suffered a supplementary statement before the police

stating that Joga Singh was not present on the spot at the time of occurrence. To further bolster such version, the statement of one Smt. Sukhdeep Kaur wife of Rajinder Pal Singh came to be recorded by the IO SI Balbir Singh for the first time on 15.01.2019 wherein she claimed herself to be an eyewitness to the occurrence and stated that Joga Singh was not present on the spot and the accused Surinder Pal Singh alone had attacked and inflicted injuries on the person of victim Saroop Singh. The supplementary statement of PW Gurmit Singh was also recorded wherein he stated that Joga Singh was not present on the spot at the time of occurrence. All the said witnesses were also produced before the senior police official Addl. Superintendent of Police before whom such version was re-stated and it was concluded on that basis that Joga Singh was innocent and he was not present on the spot at the time of occurrence.

7) Clearly, the plea of alibi which has been accepted by the police while presenting report u/s 173 Cr.P.C. proceeded initially on the statements of Bhupinder Singh, Chapinder Singh and Gobind Singh who were not present on the spot at the time of occurrence while statement of PW Sukhdeep Kaur alleged eye-witness to the occurrence came to be recorded much subsequently and there was no mention of her presence even in the statement of PW Rajinder Pal Singh, her husband which was recorded on the very day of the occurrence. As to the statement of PW Sucha Singh and the other shop owners of New Subzi Mandi namely Amar Nath, Yash and Rajesh Kumar, their statements do not rest on any clear/cogent documentary proof as to the presence of Joga Singh in New Subzi Mandi at the relevant time, as to entitle them to be considered in preference and belying the version in the statements of PW Ranjit Kaur

complainant and PW Darshan Deep Kaur, eye-witnesses to the occurrence. The tower location of cell phone of Joga Singh is too tentative an evidence as to amount to his non-presence on the spot at the time of occurrence. In so far as the CD which was presented to the police by Rajinder Pal Singh, suffice it to say that the authenticity and admissibility of such evidence is to be seen at the appropriate stage and merely on that basis the innocence of Joga Singh cannot be said to be established.

8) Law is well settled that at the stage of taking cognizance only a prima facie case has to be seen. From the documents and material appended with the challan and after examining the material collected by the police during investigation on the basis of which Joga Singh was found innocent by the police, I am of the considered opinion that the documents and material appended with the challan are sufficient to prima facie show the involvement of the accused Joga Singh in the occurrence and it is prima facie made out that on day of occurrence Joga Singh was accompanying the accused Surinder Pal Singh, he had stopped the tractor of the deceased Saroop Singh, raised lalkara to finish the deceased and cut him into pieces and in this manner shared common intention with the accused Surinder Pal Singh in causing death of the deceased Saroop Singh. Further, I am of the considered opinion that the material relied upon by the prosecution exonerating Joga Singh of complicity in the occurrence is not sufficient to raise such inference. Consequently, prima facie case is made out to summon Joga Singh son of Surinder Pal Singh as additional accused for the commission of offence u/s 302/34 IPC. Having regard to the nature of the offence, the presence of Joga Singh be now secured by means of non-bailable warrants of arrest returnable on 18.04.2019.”

Learned counsel for the petitioner has further argued that since the petitioner was found innocent by the investigating agency and was later on summoned by the aforesaid order, he may be granted concession of anticipatory bail as his custodial investigation is not required and no recovery is to be effected from him.

In reply, learned State counsel, on the basis of the affidavit of Superintendent of Police, Ambala and on instructions from ASI Shish Pal, though has admitted that in inquiry, conducted by Inspector Ajit Singh, SHO, PS-Ambala City and Chander Mohan, IPS/ASP, Ambala, it is found that PW Gurmeet Singh stated that on 11.12.2018, he heard the noise and saw that Surinder Pal Singh was having an axe in his hand and he caused injuries to Sarup Singh (deceased) and his wife Ranjit Kaur and daughter Darshan Deep Kaur raised noise "*Bachao Bachao*". Thereafter, to find out the discrepancies between the statements of Darshan Deep Kaur and Gurmeet Singh, further inquiry was conducted and statement of some persons, namely Sucha Singh and Amarnath, were recorded who stated that petitioner was present in the vegetables market where he received information about the commission of crime. It is further stated that Pws Sukhdeep Kaur, Chhapinder Singh and Gobind Singh have stated that they have seen the occurrence of causing injuries by Surinder Pal Singh and the petitioner was not present at the place of occurrence.

It is further stated in the aforesaid affidavit that the call details of mobile No. 97287-31374 were taken along with certificate under Section 65-B of the Indian Evidence Act and the petitioner was not present at the spot.

Learned counsel for the complainant has argued that the police has virtually believed the plea of alibi taken by the petitioner which is to be decided during the course of trial on the basis of the evidence.

Learned counsel for the complainant has relied upon **2010 (4) R. C. R. (Criminal) 363, Uma Shankar Singh vs. State of Bihar and another**, wherein Hon'ble Supreme Court has held that the Magistrate can take cognizance under Section 190(1)(h) of the Cr.P.C. even if the police has submitted a report under Section 173 Cr.P.C. exonerating the accused.

After hearing learned counsel for the parties, I find no ground to grant the concession of the anticipatory bail to the petitioner.

Looking at the first information report, complainant Ranjit Kaur, wife of Sarup Singh (deceased), has given an eyewitness account and has stated that petitioner was present along with his father Surinder Pal Singh who caused fatal injuries to her husband. The daughter of the complainant Darshan Deep Kaur is also an eyewitness and the plea of alibi taken by the petitioner or the plea that said Darshan Deep Kaur was not present at the spot are to be decided during the course of trial.

Learned counsel for the petitioner could not dispute that the Magistrate was competent to take cognizance under Section 190 Cr.P.C. while passing the order dated 04.04.2019 summoning the petitioner and has also stated that the petitioner has not yet challenged the said order.

The trial Court has observed in the aforesaid order that the tower location of the petitioner is a tentative evidence and admissibility of the CD to prove that Darshan Deep Kaur was not present at the spot is yet to be seen at the appropriate state of the trial.

Therefore, considering the above facts and serious allegations against the petitioner who is also named in the FIR and also keeping in view the gravity of the offence in which husband of the complainant was murdered, the petitioner is not found entitled to get concession of anticipatory bail.

Petition is dismissed accordingly.

22.05.2019
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No