

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

CRM-M-36691-2014
Reserved on : 06.02.2020
Pronounced on : 11.02.2020

Parbhat Khanna and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Ms. Satpreet Grewal Kapila, Advocate
for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab,
assisted by ASI Sukhwinder Singh.

ARVIND SINGH SANGWAN, J.

1. Prayer in this petition, filed under Section 482 Cr.P.C., is for quashing of FIR No. 38 dated 19.02.2008, registered under Sections 224 and 225 of the IPC at Police Station Bholath, District Kapurthala.
2. This petition is pending since 2014, therefore, it was taken up in the urgent list.
3. Brief facts of the case are that prior to registration of the impugned FIR No. 38, another FIR bearing No. 37 dated 19.02.2008 was registered under Sections 420, 465, 467, 471 and 120-B of the IPC against petitioner No. 3 Surinder Kumar, his real brother Dalip Chand and one Madan Lal, DRO of Kapurthala on the complaint of one Prem Kumar. It is worth noticing here that the said FIR was later on quashed on the basis of the compromise between the parties as it was a private dispute regarding a

land, vide order dated 26.08.2009 passed by this Court in CRM-M-30526-2008.

4. Brief facts of FIR No. 38 are that petitioner No. 3 Surinder Kumar, who was a Patwari, was arrested in aforesaid FIR No. 37 and was brought up in the police lock up in Police Station Bholath, District Kapurthala. He was under the supervision of complainant/SI Gulzar Singh (retired as DSP). Petitioner No. 3 was confined in the police station lock up and vide DDR No. 26, an entry in this regard was made in the police station on 19.02.2008 at 7.30 PM. Thereafter, on the same day, at 08.00 PM, vide DDR No. 27, he was taken out from the police lock up for the purpose of interrogation. During interrogation by SI Gulzar Singh, petitioner No. 3 Surinder Kumar (in FIR No. 37) managed to escape in connivance with his brother Kewal Krishan and sons Prabhat Khanna and Purab Khanna, petitioner Nos. 1 and 2 herein. Therefore, the impugned FIR No. 38 was registered and case Diary No. 28 dated 19.02.2008 at 9.15 PM was also recorded by the same SI Gulzar Singh.

5. Learned counsel for the petitioners has submitted that petitioner No.1 Prabhat Khanna was aged about 14 ½ years at the time of incident and petitioner No. 2 Purab Khanna was aged about 18 years at that time and both of them were falsely implicated in the present FIR being sons of petitioner No. 3 Surinder Kumar, who allegedly escaped from the police custody during interrogation in FIR No. 37.

6. Learned counsel for the petitioners has further submitted that immediately thereafter, Harjeet Kaur, mother of petitioner Nos. 1 & 2 and wife of petitioner No. 3, filed a civil writ petition bearing CWP No. 3384 of 2008, titled as Harjit Kaur vs, State of Punjab & others, praying issuance of

a writ in the nature of Mandamus to ensure the safety of her minor sons, who were to appear in school board examinations in the month of March, 2008 as the FIR pertains to February, 2008. It was submitted in the said petition that minor sons of Harjit Kaur have falsely been implicated in FIR No. 38 just to put pressure on them to locate the whereabouts of petitioner No. 3.

7. A Division Bench of this Court passed the following order in CWP No. 3384 of 2008 on 10.03.2008:

“Reply on behalf of respondent no. 1 has been filed in Court today, a copy whereof has been furnished to the learned counsel for the petitioner. It has been pointed out that F.I.R. No. 38 dated 19-2-2008 under Sections 224 and 225 IPC, Police Station Bholath has been registered against the sons of the petitioner, namely Purab and Prabhat, aged 15 and 19 years respectively. We are prima facie of the view that the allegations against the children are extra-ordinary and those allegations have been leveled only to procure the presence of Surinder Kumar Patwari, their father.

Accordingly, we stayed the proceedings in F.I.R. No. 38 dated 19-2-2008. We also direct the Deputy Superintendent of Police, Sub Division Bholath, District Kapurthala, to ensure the safety and liberty of the petitioner as well as her sons. There should be no impediment if the petitioner's sons wish to appear in 10+2 standard as has been prayed by the petitioner.

List again on 14-5-2008 for further consideration.

A copy of this order be given under the signatures of the bench secretary to the learned State Counsel as well as to the learned counsel for the petitioner.”

8. The aforesaid petition is stated to be still pending.

9. Learned counsel for the petitioners has further submitted that thereafter, Surinder Kumar had filed an anticipatory bail application before this Court along with co-accused Dalip Chand in FIR No. 37, wherein the following order was passed in CRM-M Nos. 8249 and 8685 of 2008 on 29.05.2008:

“This order disposes of above mentioned two bail applications filed under Section 438 of the Code of Criminal Procedure as the same have arisen out of a common FIR Information Report No. 37 dated 19th February, 2008, under Sections 420, 465, 467, 471, 120-B Indian Penal Code, registered in Police Station Bholath, District Kapurthala.

Learned counsel for the petitioners has contended that dispute is with regard to change of khasra girdawari in the name of the petitioners by the revenue officials. Petitioner Surinder Kumar is a Patwari of another Halqa and has nothing to do with the change of Khasra Girdawari of the land owned by Dalip Chand.

By orders dated 1st April, 2008 and 7th April, 2008, the petitioners were directed to join the investigation and in case of their doing so, they were ordered to be released on interim bail to the satisfaction of the Arresting Officer.

Learned State counsel has stated that the petitioners have joined the investigation and as such, their custodial interrogation is not required.

In view of above, orders dated 1st April, 2008 and 7th April, 2008, passed by this Court are made absolute to the effect that the petitioners in the event of their arrest/surrender in the Court shall be released on bail by the Arresting Officer of such Court to its satisfaction till the challan/charge sheet is filed and till the application for regular bail to be preferred by the petitioners is

finally decided by the Court competent to try the case.

Trial Court or the Court of inquiry while dealing with the application for regular bail under Section 439 of the Code of Criminal Procedure, shall be guided by the observations made by this Court on the basis of evidence collected so far against the petitioners. However, trial Court shall use its own discretion in rejecting the application for regular bail provided further evidence of complicity is collected or appears against the petitioners after passing of this order by this Court.

Disposed of.”

10. Learned counsel for the petitioners further submitted that when the aforesaid petitions were disposed of on 29.05.2008, granting anticipatory bail to petitioner No. 3 Surinder Kumar and his brother Dalip Chand, it was not brought to the notice of the Court that the present FIR No. 38 was also pending against Surinder Kumar.

11. Learned counsel for the petitioners further submitted that except for recording DDR Nos. 27 and 28 in FIR No. 37 and DDR No. 1 in the present case that petitioner No. 3 has escaped from the police custody, no action was taken against the police officials, who were present in the police station at that time including SI Gulzar Singh.

12. Learned counsel for the petitioners further argued that just to put the entire blame on petitioner No. 3, two of his minor sons, i.e. petitioner Nos. 1 and 2, were involved in the present FIR with the mala fide intention to create pressure on them so that petitioner No. 3 may surrender.

13. Learned counsel further submitted that in fact Surinder Kumar was never arrested and the entire proceedings were initiated by SI Gulzar Singh on papers to show that he was arrested as is clear from the

anticipatory bail order passed by this Court on 29.05.2008.

14. Learned counsel further argued that even in the aforesaid writ petition, filed by the mother of petitioner Nos. 1 and 2, this fact was noticed that they have falsely been implicated.

15. Replies, filed by way of affidavit dated 23.04.2015 of DSP, Sub Division Bholath as well as by way of affidavit dated 17.05.2018 of the Investigating Officer, are on record.

16. Learned State counsel has relied upon DDR Nos. 26 and 27 dated 19.02.2008 to submit that petitioner No. 3 Surinder Kumar was brought in the police lock up and when he escaped another DDR No. 28 was recorded in this regard and impugned FIR No. 38 was registered under Sections 224 and 225 of the IPC.

17. Learned State counsel further submitted that since petitioner Nos. 1 and 2 and brother of Surinder Kumar had helped Surinder Kumar in escaping from the police custody, they were also implicated as accused in the present FIR.

18. Learned State counsel has further relied upon zimini No. 19 dated 19.02.2008, recorded by SI Gulzar Singh, ASHO, PS-Bholath to submit that it is recorded that when the interrogation of Surinder Kumar started, his brother and sons petitioner Nos. 1 and 2 came there. Since Surinder Kumar had told that he is a heart patient and he wanted to take medicine and during conversation, Surinder Kumar along with brother Kewal Krishan and sons petitioner Nos. 1 and 2, who have hidden them behind the gate of the police station, fled away from there, in the presence of Gulzar Singh as well as in the presence of Santri of the police station, namely Balkar Singh. Therefore, the present FIR No. 38 was registered.

However, the fact that FIR No. 37 stands quashed by this Court on the basis of the compromise between the parties is not disputed. It is also not disputed that in CWP No. 3384 of 2008, a direction was issued to Deputy Superintendent of Police to ensure the safety and liberty of petitioner Nos. 1 and 2. However, it is submitted that said order was later on vacated on 10.10.2014.

19. After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons:

(a) As per own case of the prosecution, petitioner No. 3 was arrested in FIR No. 37 and when he was brought to the police station, he, with the help of his brother and two minor sons, escaped from the police custody in the presence of complainant SI Gulzar Singh and Santri Balkar Singh. This story seems to be totally improbable that a person can so easily escape from the police custody along with his two minor sons. This Court in CWP No. 3384 of 2008, on appreciation the facts of FIR No. 38, has rather granted protection to petitioner Nos. 1 and 2 to appear in their examinations by observing that the allegations against petitioner Nos. 1 and 2 are extraordinary and have been levelled only to procure the presence of petitioner No. 3, who is their father.

(b) A perusal of affidavits of DSP and the Investigating Officer nowhere reflects that any

departmental action was ever taken against the police officials, especially against complainant SI Gulzar Singh and Santri Balkar, in whose presence, petitioner No. 3 has allegedly escaped, which also raises doubt on the prosecution version that Surinder Kumar was ever arrested.

- (c) A perusal of order dated 29.05.2008, granting anticipatory bail to Surinder Kumar in FIR No. 37 in which he was allegedly arrested and later on escaped, nowhere reflects that he had absconded from the police custody and, therefore, it raises suspicion whether petitioner No. 3 Surinder Kumar was ever arrested in FIR No. 37.
- (d) The affidavit of the Investigating Officer, dated 17.05.2018, further shows that the case is still at the stage of investigation and the challan will be presented only after completion of investigation. Therefore, despite a lapse of almost 12 years, the police is unable to complete the investigation which demonstrates that in fact just to hide some wrong doings on the part of the police officials, the impugned FIR No. 38 was registered as it appears that police never want to complete the investigation in the present case.
- (e) On the face of the FIR and on perusal of the orders passed by this Court in the aforesaid writ

petition as well as in anticipatory bail application,
this Court finds that involvement of petitioner
Nos. 1 and 2 is highly improbable.

20. Accordingly, the present petition is allowed and FIR No. 38
dated 19.02.2008, registered under Sections 224 and 225 of the IPC at
Police Station Bholath, District Kapurthala is hereby quashed along with all
the subsequent proceedings qua the petitioners herein.

11.02.2020
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>