

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

CRM-M No.26304 of 2020

Date of decision: 8th September, 2020

Sumedh Singh Saini

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. A.P.S. Deol, Senior Advocate with
Mr. Himmat S. Deol, Advocate for the petitioner.

Mr. Siddharth Luthra, Senior Advocate with
Mr. Harin P. Raval, Senior Advocate, assisted by

Mr. Karan Bharihoke, Mr. Sheezan Hashmi,
Mr. Anmol Kheta, Advocates; and

Mr. Sartej Singh Narula, Special Public Prosecutor;
Ms. Anusha Nagarajan, Dy. Advocate General, Punjab;
Ms. Diya Sodhi, Assistant Advocate General, Punjab;
Mr. Jagmohan Ghuman, Dy. Advocate General, Punjab
for the respondent/State.

FATEH DEEP SINGH, J.

The petitioner Sumedh Singh Saini, who is accused in case bearing FIR no.77 dated 06.05.2020 under Sections 364, 201, 344, 330, 219, 120-B IPC (Section 302 IPC added subsequently vide memo No.961/5A/PS Mataur dated 21.08.2020) pertaining to Police Station City Mataur, District S.A.S. Nagar (Mohali), has come up in this first bail application under Section 438 Cr.P.C. before this Court.

Upon hearing Mr. A.P.S. Deol, Senior Advocate assisted by Mr. Himmat Singh Deol, Advocate for the petitioner as well as Mr. Siddharth Luthra, Senior Advocate; Mr. Harin P. Raval, Senior Advocate, assisted by Mr. Karan Bharihoke, Mr. Sheezan Hashmi, Mr. Anmol Kheta, Advocates; Mr. Sartej Singh Narula, Special Public Prosecutor; Ms. Anusha Nagarajan, Dy. Advocate General, Punjab and Ms. Diya Sodhi, Assistant Advocate General, Punjab representing the respondent/State and on perusal of the records at length.

The accused petitioner is Ex-DGP Punjab, who demitted his office as such in the year 2015 and retired in the year 2018. The allegations against the petitioner and others, who all happen to be Ex-Police officials, have come from present complainant Palwinder Singh Multani son of Sh. Darshan Singh Multani, IAS (now deceased) and brother of Balwant Singh Multani; the latter alleged to have been killed in State-managed elimination around the month of December 1991. The allegations are to the effect that Balwant Singh Multani (hereinafter referred to as 'the deceased') was employed as a Junior Engineer with Chandigarh Industrial and Tourism Development Corporation Limited (CITCO) and resided in his house at Mohali. During the tenure of the petitioner as Senior Superintendent of Police, Chandigarh on the early morning of 11.12.1991 the police of Chandigarh swooped upon the

residence of the deceased and took him away forcibly and illegally without assigning any reason. Sh. Darshan Singh Multani, IAS (since deceased) raised hue and cry over this abduction. It is alleged that DSP Baldev Singh Saini on instructions of the petitioner also abducted one Jaspreet Inderjit Singh and his father Manjit Singh, and the whole game-plan was made with a view to know the whereabouts of one Davinder Pal Singh Bhullar who happens to be relative of the deceased. During the course of the events, the Chandigarh police headed by SI Satbir Singh and others took Balwant Singh Multani, Manjit Singh and Jaspreet Inderjit Singh to village Dayalpura Bhaika and from there picked up Balwant Singh Bhullar father of Davinder Pal Singh Bhullar and thereafter in village Rampura took into custody Kultar Singh father-in-law of Davinder Pal Singh Bhullar. All these persons, by the accused in this case, were taken to CIA Staff, Sector 11, Chandigarh and kept in illegal custody of SI Satbir Singh, who was being instructed from time to time by the petitioner. It was during the course of their illegal detention, the deceased was given third degree treatment by the accused which has been detailed in the complaint and need not be reproduced here. On account of police excesses, the deceased became unwell and on 13.12.1991 an FIR No.440 of 1991 under Sections 212, 216 IPC; Section 25 of the Arms Act, and Sections 3 and 5 of the Terrorist and Disruptive

Activities (Prevention) Act, 1987 was registered with Police Station, Sector 17, Chandigarh and Balwant Singh Multani was shown to be an accused in the said case and hence arrested on false allegations by SI Har Sahai Sharma, In-charge of Police Station, Sector 17, Chandigarh. It was during the police torture Balwant Singh Multani succumbed to the ghastly third degree treatment of the police. The accused as an outcome of this conspiracy manipulated and falsely depicted that SI Jagir Singh has taken Balwant Singh Multani to Qadian, District Batala, whereby the deceased was shown to have been declared as a proclaimed offender. The father of the deceased in his endeavour to know the whereabouts of his son, took refuge to various legal recourses but did not meet with any success, apparently because of the great political patronage, power and influence wielded by the petitioner. It is consequent thereupon, after father of the deceased too died in the year 2015, the brother complainant took up the cudgels and that is how the present case was got registered.

Mr. A.P.S. Deol, Senior Advocate assisted by Mr. Himmat Singh Deol, Advocate representing the petitioner has laid a scathing attack citing political vengeance for false implication of the petitioner in this case. Learned counsel has drawn at length through the various events of the past to bring about the causes of this enmity of the present regime with the petitioner. It is submitted that earlier Hon'ble the Supreme Court

of India in **Criminal Appeals No.753-755 of 2009** titled **‘State of Punjab v. Davinder Pal Singh Bhullar & others etc.’** decided on **07.12.2011**, had passed orders declaring the proceedings to be a nullity and the FIR so registered by the CBI stood quashed. It is claimed that once the proceedings have been set-aside, subsequent FIR on the same very averments does not sustain. Going further, the counsel has forcefully submitted that the Court of learned Additional Sessions Judge, S.A.S. Nagar vide orders dated 11.05.2020 had allowed the petitioner anticipatory bail in this case got registered by way of FIR no.77 dated 06.05.2020 under Sections 364, 201, 344, 330, 219, 120-B IPC pertaining to Police Station City Mataur, District S.A.S. Nagar Mohali. Thus, it is sought to be impressed upon the Court that with the malicious addition of offence under Section 302 IPC, the petitioner is certainly entitled to grant of anticipatory bail and his custody in the additional offence is not solicited for. It is with much force and elance the counsel has stressed that it is after an inordinate delay of almost 29 years the State has woken up from its slumber to prosecute the petitioner for a stale case which does not sustain in the eyes of law. The counsel has attacked the disclosure statement of one Inspector Gurmeet Singh alias Pinki made in his interview in a National English Daily magazine and has sought to doubt the legality and veracity of such a piece of evidence. Mr. APS Deol,

learned Senior Advocate has sought to brush under the carpet all these averments on the principle of there being no preliminary enquiry in the light of “**Lalita Kumari v. State of U.P.**” (2014) 2 SCC 1 and being barred by the principle of constructive resjudicata.

Learned counsel for the petitioner has detailed at length the events to hammer-home the point that at no point of time there has been misuse of concession of anticipatory bail so granted to the petitioner. Learned counsel has contended that being a senior Ex-functionary of the Police having participated in bringing the State of Punjab to normalcy, needs to be compassionately dealt with and sought grant of bail.

Mr. Sartej Singh Narula, Special Public Prosecutor along with Mr. Siddharth Luthra, Senior Advocate; Mr. Harin P. Raval, Senior Advocate, assisted by Mr.Karan Bharihoke, Mr. Sheezan Hashmi, Mr.Anmol Kheta, Advocates; Ms.Anusha Nagarajan, Dy. Advocate General, Punjab and Ms. Diya Sodhi, Assistant Advocate General, Punjab representing the respondent/State at the very onset have sought to argue that the petitioner happens to be a blue eyed police official with political patronage and have sought to meander through various episodes during his tenure in the police force regarding innumerable police encounters/State-managed eliminations and have even cited a judgment of this Court in ‘**Vinod Kumar vs. The State of Punjab and others**’

1996 (1) PLR 325 to impress upon the Court that the petitioner had even gone to the extent of overawing the Courts. It is submitted that the letter bearing No.19719 dated 06.06.2020 of the office of Senior Superintendent of Police, Batala shows that even after his retirement, the petitioner wields much influence and had the audacity to retain the vital police files which could be of incriminating nature against his interest. Much stress is sought to be laid on the evidence that has come up subsequent to the bail order dated 11.05.2020 of learned Additional Sessions Judge, SAS Nagar Mohali, submitting that former police officials SI Jagir Singh, SI Kuldeep Singh and SI Har Sahai Sharma have become the approvers and have admitted how while in police custody Balwant Singh Multani was tortured and eliminated and the manner in which they had produced an accused impersonating as Balwant Singh Multani when it was apparent that he had already been put to death much prior thereto and had only secured the remand to escape being prosecuted in this elimination.

Learned counsel for the respondent/State in unison have submitted that crimes do not die with the efflux of time and can be revived at any point of time as and when evidence surfaces and have placed reliance upon **‘Gurbaksh Singh Sibbia vs. State of Punjab’ (1980) 2 SCC 565; ‘State of A.P. vs. Bimal Krishna Kundu’ (1987) 8**

SCC 104; ‘Union of India vs. PadamNarain Aggarwal’ 2008 (13) SCC 305; ‘Directorate of Enforcement vs. P.V. Prabhakar Rao’ (1997) 6 SCC 647; ‘State of Gujarat vs. Narendra K. Amin’ (2008) 13 SCC 594; ‘Narendra K. Amin vs. State of Gujarat’ (2008) 13 SCC 584; ‘Maruti Nivrutti Navale vs. State of Maharashtra’ (2012) 9 SCC 235; ‘Sanjeev R. Bhatt vs. State of Gujarat’ R/CRM Misc.No.23368/2018; ‘Sanjeev R. Bhatt vs. State of Gujarat’ Special Leave to Appeal (Crl.) No.2919/2019; ‘Pardeep Ram vs. State of Jharkhand and another’ (2019) SCC OnLine 825; ‘State vs. Anil Sharma’ (1997) 7 SCC 187; ‘Prahlad Singh Bhati vs. NCT, Delhi’ (2001) 4 SCC 280; ‘Prakash Kadam vs. Ramprasad Vishwanath Gupta’ (2011) 6 SCC 189; ‘Panchanan Mishra vs. Digambar Mishra’ (2005) 3 SCC 143; ‘Lachhman Dass vs. State of Haryana’ (1997) 1 RCR (Cri) 201; ‘Inder Singh vs. Shiv Charan’ (2002) 1 RCR (Cri) 743; ‘Hazura Singh vs. State of Punjab’ 1995 SCC Online P&H 724; ‘Dalbir Singh vs. State of Uttar Pradesh’ 2009 (11) SCC 376; ‘Yashwant vs. State of Maharashtra’ 2018 SCC Online SC 1336; ‘CBI vs. Keshub Mahindra’ (2011) 6 SCC 216; and ‘Paramjit Kaur vs. State of Punjab & others’ W.P. (Crl) No.497 of 1995 dated 12.12.1996. It is submitted that the petitioner has breached the condition of bail imposed vide orders dated 11.05.2020 (Annexure P2) by the Court

of learned Additional Sessions Judge, Mohali, and that in spite of Z+ security the petitioner has vanished from the State. The relevant part of the said order (Annexure P2) is reproduced herein below:-

“(d) That till the lock-down period, he will remain in his house and will not leave it in any circumstances except in case of medical emergency and whenever he is called to join investigation.”

Learned counsel representing the respondent/State concluding their submissions have sought to enliven that because of the power wielded by the petitioner by virtue of his status and there being innumerable efforts of the family to get justice, the same were nullified by the influence of the petitioner and it is only when witnesses have openly come forward to testify, it has dawned upon the family how there has been murder of the deceased at the hands of the petitioner and his cohorts. It is contended that custodial interrogation of the petitioner is very much essential to unearth the manner in which the deceased Balwant Singh Multani was interrogated, tortured and eliminated and the persons responsible during this recourse and how his body was disposed off, and which has its cascading effect on the entire prosecution story, which necessitates that the petitioner be arrested and interrogated to unearth all these vital evidences against him.

The Court has given a thoughtful consideration to the submissions of the two sides. The claim of Mr.A.P.S. Deol, Senior Advocate that vide orders dated 07.12.2011 (Annexure P10) passed by the Supreme Court in **Criminal Appeals No.753-755 of 2009 titled ‘State of Punjab v. Davinder Pal Singh Bhullar & others etc.’ decided on 07.12.2011** the FIR was quashed, debars fresh prosecution, does not impress the Court much. A close look at the orders of the Supreme Court of India (Annexure P10) shows that it was on account of misdemeanor arising out of few instances which are well illuminated in the said orders, the Court had allowed the appeals and held the impugned order passed by this Court, which was challenged by the petitioner, to be a nullity. However, in the concluding paragraph, the Supreme Court had clarified as follows:-

“80. However, it is open to the applicants who had filed the petitions under Section 482 Cr.P.C. to take recourse to fresh proceedings, if permissible in law.”

Thus from this, it is evident that this order does not debar the complainant to have fresh recourse to his aggrievement and therefore, this argument on behalf of the petitioner falls to the ground.

A perusal of the records is in itself illustrative how the deceased having been illegally apprehended within the jurisdiction of District Mohali, at no point of time over this long period was ever

produced before the Judicial Magistrate and it was only before an Executive Magistrate in another District in Gurdaspur he is alleged to have been produced on 14.12.1991 before the SDM from where he is stated to have escaped from huge posse of police and paramilitary forces; rather rightly strengthens the belief of the complainant and a rationale person that it was with a preconceived plan the entire gamut was played to facilitate easy elimination of Balwant Singh Multani. Prior thereto the police admits being in custody of the deceased and therefore a heavy onus lay on it to remove this needle of suspicion which it has not been prima-facie able to succeed. Though initially the petitioner was allowed anticipatory bail vide orders dated 11.05.2020 when the investigations were at nascent stage but subsequently on account of addition of offences, the Court of learned Additional Sessions Judge, SAS Nagar (Mohali) vide orders dated 10.07.2020 had dismissed the anticipatory bail of the petitioner in view of the evidence collected and which has prompted the petitioner to come up and knock at the doors of this Court.

The Supreme Court in **Pardeep Ram's case (ibid)** had gone into this aspect of the matter where there has been addition of offences during the subsistence of anticipatory bail, and has held that the Court in exercise of powers under Section 437(5) Cr.P.C. and Section 439(2) Cr.P.C. can direct taking into custody of the accused, who has already

been granted bail and thereby commit him to custody on addition of graver offences and there need not be necessarily an order cancelling of an earlier bail. Similarly, in another view in the case of **‘Sushila Aggarwal and others vs. State (NCT of Delhi) and another’ 2020 (5) SCC 1**, the Supreme Court has held that an order of anticipatory bail does not in any manner limit or restrict the rights or the duties of the police/investigating agency to investigate into the charges against a person who seeks and is granted pre-arrest bail. Even in an earlier view of the Supreme Court in **Gurbaksh Singh Sibbia’s case (ibid)**, same was the ratio. More so, a million dollar question arises whether under the garb of interim bail/anticipatory bail, the hands of the investigating agency can be tied so as to frustrate its endeavours to unearth the truth and reach into the circumstances unfolding into the manner of the crime. If it would have been the intention of the legislature then no crime in this world could have been detected and the culprits would have gone scot-free.

In **‘Japani Sahoo vs. Chandra Sekhar Mohanty’ (2007) 7 SCC 394**, the Supreme Court of India has held that general rule of criminal justice is that a crime never dies. The relevant part of the judgment reads as follows:-

“14. The general rule of criminal justice is that "a crime never dies". The principle is reflected in the

well- known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders). The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of Law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of Law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict.”

Applying the same very ratio to the instant case, a look at the complaint and undisplaced facts before this Court, shows that since the day of his disappearance and prior thereto the family had been making every conceivable effort in initiating judicial process and which rather had remained in oblivion to the constitutional rights of the deceased's family, are matters which certainly are of much relevance and substantiate the plea of State the unbridled powers of petitioner. Even in the innumerable cases that one experiences in life, shows that for one reason or the other, be it political or otherwise, many of the crimes remain buried for a period of time and it is with passage of time the same

are unearthed and therefore, does not discourage the investigating agency from laying off its hands from such grave crimes against humanity. As has been argued for the State, the petitioner happened to be a blue eyed boy and with political patronage wielded great influence and was law unto himself and even went to the extent of intimidating judicial process which is evident from the observations of this Court in **Vinod Kumar's case (ibid)** by a Senior Judge of this Court followed by earlier recusal in these matters by two sitting Judges of this Court. Moreover, as is brought to the notice of this Court that in the Trial of this case at New Delhi the petitioner has intimidated even the investigating officer of CBI forcing him to turn hostile. Since much evidence of police officials and other witnesses has come up after the decision of earlier bail application of petitioner, an urgent need arises to preserve the same from prying eyes of the petitioner, for the trial. Moreover, in such nature of crime the commission is in utmost secrecy and coming across witnesses is a herculean task in itself as it is more based on circumstances and common human experiences which were experienced in abundance by this State in those dark days. Since it is at this juncture, the investigating agency has woken up and gathered courage to investigate its own officer and therefore, the vital pieces of evidence which would come handy in leading to various leads would inch towards unraveling this puzzle which

too has baffled the citizenry who are looking upon the justice system as a last resort to get justice. Even otherwise, it is a well settled proposition of law that provisions of Section 438 Cr.P.C. are to be sparingly used. In the light of the seriousness of offences that have come about there being every likelihood of petitioner stifling fair investigations and trial and for which custodial interrogation of the petitioner is very much essential to piece together this unfortunate incident, necessitates dismissal of the instant bail application. Ordered accordingly.

(FATEH DEEP SINGH)
JUDGE

September 8, 2020
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No