

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

(1) CRM-M-17737-2020 (O&M)

Kulwinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

(2) CRM-M-21767-2020 (O&M)

Jaskaran Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

Date of decision: 31.03.2021

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Gautam Dutt, Advocate for the petitioner
in CRM-M-17737-2020.

Mr. Amit Dhawan, Advocate for the petitioners
in CRM-M-21767-2020.

Mr. J.S. Ghuman, DAG, Punjab.

Mr. APS Deol, Sr. Advocate with
Mr. ADS Jattana, Advocate for the complainant.

H.S. MADAAN, J.

Case taken up through video conferencing.

These petitions for pre-arrest bail under Section 438 Cr.P.C.

have been filed by petitioners Kulwinder Singh, Jaskaran Singh and Paramjit Singh @ Sethi, all of them being accused in FIR No.24 dated 20.02.2020, for offences under Sections 323, 324, 341, 148, 149 IPC and for the added offences, vide DDR No.33 dated 29.02.2020, under Sections 307, 325 and 326 IPC, registered with Police Station Adampur, Jalandhar Rural.

Briefly stated the prosecution version is that, criminal machinery in this case was set into motion by complainant Gobind Singh @ Gopi son of Satwinder Singh, R/o Village Deegrian, District Jalandhar (Rural), aged about 32 years, an agriculturist by avocation, who in the statement got recorded by him with the police stated that on 18.02.2020 at 11.00 AM, he was riding motorcycle make Bullet bearing registration No.PB08-DH-9004, going from Pandori Nijjran to Nazka Road; Gurpreet Singh son of Harvinder Singh, resident of his village was going ahead of him in his car, make Polo bearing registration No.PB08-DH-8812; Sukhwinder Singh @ Sukha son of Gurbachan Singh, resident of Village Pandori Nijjran was going further ahead on tractor make New Holland-5500 bearing No.PB08-CH-4576 belonging to complainant; Kulwinder Singh and Gurjit Singh sons of Sewa Singh, residents of Village Deegrian were going on their tractor make New Holland, who were seeing behind quite often and at times they would stop their tractor trolley; when tractor driven by Sukhwinder Singh had gone 400-500 yards ahead of Pandori Nijjran turn, then Kulwinder Singh and Gurjit Singh stopped their tractor trolley; two I-20 cars of

white colour came from behind; Paramjit Singh and Happy sons of Amrik Singh, residents of Deegrian and Jaskaran Singh son of Makhan Singh besides Sewa Singh son of Rajinder Singh, Gurdeep Singh son of Rajinder Singh, residents of Deegrian alighted from those cars; Sewa Singh and Gurdeep Singh raised lalkara that the complainant side should be caught hold of and taught a lesson for getting the post of Nambardar and they should not be allowed to escape; hearing that, the complainant and other persons with him went towards katcha path on the right hand side of the road to save themselves, however, the accused chased them; Kulwinder Singh gave a datar blow to the complainant, hitting him on the back side of the head on the left side; then Gurjit Singh @ Jeeta gave a blow to the complainant on his left leg with a datar from reverse side, he gave another blow to the complainant from reverse side of the datar hitting him on back side of biceps on left arm; Kulwinder Singh gave another blow to the complainant hitting him on back side of his right shoulder; thereafter, Jaskaran Singh gave a kirpan blow to Gurjit Pal Singh with an intention to kill him hitting him on back side of his head on left side; then Happy gave a reverse datar blow to Gurjit Pal Singh hitting him on back of his head towards right side; thereafter Jaskaran Singh gave another kirpan blow, which found its target on left hand finger; Happy gave another datar blow to Gurjit Pal Singh hitting on thumb of his right hand; in the meanwhile, Paramjit Singh gave a kirpan blow to Sukhwinder Singh @ Sukha with an intention to kill him hitting him on forehead above left eye, whereas Gurdeep Singh son of

Rajinder Singh gave a reverse datar blow hitting him on left eye; Paramjit Singh gave two continuous kirpan blows hitting on inner side of right leg and back side of head of Sukhwinder Singh; the injured-victims raised alarm; Jaskaran Singh took i-phone 11 from left pocket of pajama of the complainant and i-phone7 from pocket of the pajama of Gurjit Pal Singh; when several people started gathering at the spot on hearing hues and cries of the victims, then all the assailants ran away from the spot along with their respective weapons; the injured were removed to Johal Hospital, Jalandhar by a relative of the victims, namely Bhupinder Singh son of Sohan Singh, resident of Behram Shrestha; the police was informed; on the basis of statement of complainant, formal FIR was recorded; the investigation in the case started; the police collected MLRs of the injured.

As regards Gurpreet Pal Singh-injured, four injuries were found on his person; all the injuries were kept for X-ray, CT scan and neuro surgery opinion; injuries No.1 and 3 were opined to have been caused with a sharp edged weapon and injuries No.2 and 4 with a blunt weapon; with regard to Sukhwinder Singh son of Gurbachan Singh, four injuries were observed on his person, all of which were kept for X-ray, CT scan, neuro surgery and Ophthalmology opinion; injuries No.1, 2 and 4 were opined to have been caused with a sharp edged weapon and injury No.3 with a blunt weapon.

In the MLC of Gobind Singh injured, he was also found to have suffered four injuries and out of those, injuries No.1,2 and 3 were

kept for X-ray, CT scan opinion, whereas, injury No.4 was declared to be simple in nature; injuries No.2, 3 and 4 were opined to have been caused with a blunt weapon; in MLR with regard to Jaskaran Singh, he was found to have suffered four injuries, out of those, injuries No.1 and 2 were kept for X-ray examination; injuries No.2 and 4 were opined to be simple in nature caused with a sharp edged weapon, whereas injuries No.1 and 4 were declared to have been caused with a blunt weapon.

Apprehending their arrest in this case, petitioners-accused Jaskaran Singh and Paramjit Singh @ Sethi had approached the Court of Sessions at Jalandhar by moving an application seeking pre-arrest bail, however, their such application was dismissed by Addl. Sessions Judge, Jalandhar, vide order dated 22.07.2020. Petitioner Kulwinder Singh had filed a separate application in that regard, which was also dismissed by Addl. Sessions Judge, Jalandhar, vide order dated 26.06.2020. Feeling aggrieved, the petitioners have approached this Court by way of filing the present petitions, praying for grant of similar relief, which are being resisted on behalf of the State and complainant.

I have heard learned counsel for the parties besides going through the record.

Pre-arrest bail is a discretionary equitable relief, which is to be granted by the Court in rare and exceptional circumstances to save the innocent persons from harassment and inconvenience and not to provide protective umbrella to the criminals enabling them to avoid arrest and interrogation by the investigating agency. In this case, all the

petitioners are specifically named in the FIR and criminal acts have been attributed to them. The photographs placed on record by the complainant Annexure A-1 with regard to Sukhwinder Singh-injured, Annexure A-2 with regard to Gobind Singh, Annexure A-3 with respect to Gurpreet Pal Singh show head injuries. Injuries on the person of Sukhwinder Singh and Gurpreet Pal Singh are shown to be sutured considerably. MLRs of the injured have also been placed on record with pictorial diagrams showing the injuries on vital parts. As per injury report of Gobind Singh-injured, Annexure P-4, he had suffered incised wound over the right occipital region of skull measuring 5cm X 3cm bone deep.

Although, a cross case was also registered on the basis of statement of Kulwinder Singh for causing injuries to Kulwinder Singh, Paramjit Singh and Jaskaran Singh on the allegations that Gobind Singh armed with a kirpan, Gurpreet Pal Singh and Sukhwinder Singh armed with khandas, Harvinder Singh armed with a datar, Bhupinder Singh and Dalbir Singh armed with hathies, Inder Pal Singh, Avtar Singh, Daljit Singh empty handed and Anoop Singh having mobile camera had caused injuries to Kulwinder Singh but during the course of investigation, Kulwinder Singh, Paramjit Singh, Jaskaran Singh, Gurpreet Pal Singh, Sukhwinder Singh and Gobind Singh were referred to Medical Board constituted by Civil Surgeon, Jalandhar and as per opinion received therefrom, injuries observed on the person of Kulwinder Singh, Paramjit Singh and Jaskaran could possibly be caused

by friendly hands and further the probable duration of the injuries in case of Kulwinder Singh and Paramjit Singh was within six hours, which establishes the time of receiving the injuries at about 2.00 PM on 18.02.2020, which is contrary to the oral version given by them, showing thereby that Kulwinder Singh and Paramjit Singh had manipulated the injuries so as to make a cross case. Their admission in Civil Hospital, Jalandhar on 18.02.2020 at about 08.00 PM when the incident had taken place on that very day at 10.45/11.00 AM also makes their version suspicious. With regard to offences for which the FIR had been registered which was originally for offences under Sections 341, 323, 324, 148 and 149 IPC, offences under Sections 307, 326, 325 IPC were added later on, whereas, offences under Sections 341, 324, 148 and 149 IPC were deleted. During the investigation, the police found Sewa Singh, Gurdeep Singh and Gurjit Singh to be innocent considering the call details of their mobile phones and CCTV camera footage. The cross version recorded on the statement of Kulwinder Singh was for offences under Sections 323, 324, 148 and 149 IPC and Sections 325 and 326 IPC were added later on. However, the Medical Board, which had examined the injured in the cross version had opined that the injuries on the person of Kulwinder Singh and Paramjit Singh were not grievous, therefore, offences under Sections 326, 325, 324, 148 and 149 IPC were deleted. Harvinder Singh, Bhupinder Singh, Dalbir Singh, Avtar Singh, Inderpal Singh, Daljit Singh and Anoop Singh were found to be innocent, whereas, Gobind Singh, Sukhwinder Singh, Gurpreet Pal

Singh were ordered to be challaned. Gobind Singh, Sukhwinder Singh and Gurpreet Pal Singh were found to have criminal antecedents being involved in other criminal cases, the details of which have been given in the written reply submitted by the State are as follows:-

1. FIR No.188 dated 24.10.2012, under Sections 323, 324, 325, 326, 506, 148 and 149 IPC, registered with Police Station Adampur against Sukhwinder Singh and Gurpreet Pal Singh.
2. FIR No.69 dated 07.05.2013, under Sections 420, 379, 447, 448, 506, 120-B IPC, registered with Police Station Adampur against Gurpreet Pal Singh.
3. FIR No.14 dated 14.01.2019, under Sections 447, 427, 506, 511 and 120-B IPC, registered with Police Station Mandi, Jalandhar against Sukhwinder Singh, Gurpreet Pal Singh and Gobind Singh.

Though, in the reply, the official respondents have pleaded that Deputy Superintendent of Police, Adampur had held enquiry into the matter and found that Gobind Singh, Sukhwinder Singh and Gurpreet Pal Singh had pre-determined mind to fight with Kulwinder Singh and they tried to stop the tractor of Kulwinder Singh who had increased the speed of tractor and went towards sugarcane fields on mud path; Gobind Singh etc. followed Kulwinder Singh who had reached at the end of the path and had stopped the tractor; Paramjit Singh, Harjit Singh brothers and Jaskaran Singh cousin brother of Kulwinder Singh were working in the fields; they came to rescue of Kulwinder Singh and

attacked Gobind Singh, Sukhwinder Singh and Gurpreet Pal Singh, causing injuries to them. Even if the conclusion drawn by DSP, Adampur is taken as such and it is assumed that the accused party in the FIR had right of self defence but then considering the fact that the injuries on the person of accused side are simple in nature and as per opinion of the Medical Board could be manipulated, the injuries on the person of complainant side are not commensurate with the alleged threat to life of Kulwinder Singh but much more intense and serious. Though, law allows exercise of right of self defence but that should be in proportion to the threat and not grossly disproportionate to that. In this case, even if it is assumed that the complainant side was chasing Kulwinder Singh going on tractor and right of private defence was available to him and his co-accused, however, the extent of injuries caused to the complainant and other persons from his side, more particularly, some of the injuries being on vital partes cannot be justified. Though, the petitioners have joined the investigation in terms of the direction issued to them by this Court but as stated by the State counsel, they have not rendered full cooperation and their custodial interrogation is required to find out several material facts with regard to the incident. Admittedly, custodial interrogation is definitely more elicitation oriented since a person couched in comparative safety of the pre-arrest bail would certainly not disclose all the facts within his knowledge. In case of **State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268**, Hon'ble Apex Court had

observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations. Thus, keeping in view the totality of circumstances, no case for grant of pre-arrest bail is made out. The petitions stand dismissed accordingly.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

31.03.2021

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No