

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.3006 of 2022 (O&M)
Date of decision: 23.02.2022

Patel Singh
....Petitioner

Versus

State of Punjab
....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Amitabh Tewari, Advocate
for the complainant.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.58 dated 17.05.2021, registered under Sections 302, 307, 326, 323, 324, 427, 148, 149 IPC and 25/27/54/59 of the Arms Act, and Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Counsel for the petitioner, at the very outset, has relied upon the order dated 16.11.2021, vide which the co-accused of the petitioner namely Paramjit Singh, was granted the concession of regular bail in CRM-M No.44718 of 2021. The operative part of the said order, reads as under:-

“Counsel for the petitioner submits that as per the allegations in the FIR registered at the instance of SI Nirmal Singh, on receiving an information from the

control room that there is a land dispute in village Cheema Kalan between Dhara Singh's party, who is trying to plough the land and Charan Singh's party, who is trying to stop ploughing the land and a mutual fight has taken place in which bullets are being fired from both the sides. On receiving the information, he along with co-officials, reached the village and found that Dhara Singh, his sons Salwinder Singh, Jugraj Singh, Angrej Singh, along with 25-30 unknown persons, armed with guns, pistols, swords and other sharp edged weapons were present and Rashpal Singh was ploughing the land with his tractor. The second party Charan Singh, along with his sons Surjit Singh, Ranjit Singh, his brother Dilbagh Singh, Gandhi Singh, Sarwan Singh, Dharam Singh, Jagjit Singh and petitioner-Paramjit Singh and 10-12 unknown persons armed with .12 bore pistol, sword and sharp edged weapons were mutually fighting regarding ploughing or stopping the ploughing of the land and were firing bullets on each other.

On seeing the police party, all these persons sped away from the spot. Persons from both the sides suffered bullets and sharp edged weapons injuries and their relatives have taken them to different hospitals. In presence of complainant Dhara Singh, Salwinder Singh and Kulwinder Singh, who were having injury marks and from the second party Surjit Singh, Sarwan Singh, Jagjit Singh, Paramjit Singh and Baljit Singh were also having injury mark and blood was oozing out, were taken to the hospital. When he reached the hospital to record the statement, the doctor opined that Dhara Singh's party is unfit to make statement and no MLR of the second party was received and FIR under Sections 307, 323, 324, 148, 149 IPC and Sections 25 and 27 of the Arms Act was registered. Counsel for the petitioner further submits that thereafter, on 22.5.2021, the crossversion on the statement

of Surjit Singh vide GD No. 27 was registered against the Dhara Singh's party. Counsel for the petitioner submits that in the cross-version the details of the injuries sustained by Surjit Singh and others were recorded. Later on, Dhara Singh died and Section 302 IPC was added.

Counsel for the petitioner submits that in the FIR, 16 persons, including the petitioner, have been nominated, whereas in the cross-version, 12 persons, including Dhara Singh were nominated.

Counsel for the petitioner submits that on the arrest of certain accused persons from both the sides, the report under Section 173 Cr.P.C. has already been submitted.

Counsel for the petitioner has argued that a perusal of the FIR as well as the subsequent investigation revealed that it was a case of free fight over the possession of the agricultural land, wherein the Dhara Singh's side (in the FIR case) was trying to plough the land, whereas the petitioner (petitioner's side) (cross version) they were trying to prevent them as stated in the GD that the petitioner's side had purchased 27 kanals 04 marlas of land from one Maninder Raj Singh and Dhara Singh and others, who belong to his family tried to take forcible possession though the previous wheat crop was harvested by the petitioner's side.

Counsel for the petitioner has referred to the report under Section 173 Cr.P.C. wherein the Investigation Officer, while submitting the report, has stated that it is yet to be ascertained from the Halqa Patwari regarding the ownership or possession of the land in dispute as the Patwaris' Union was on strike. Counsel for the petitioner has submitted that as per the version in the FIR, both the parties opened fire on each other and the petitioner suffered multiple injuries on his face and eyes, as per the treatment record of the petitioner reflecting as many as 04 entry wounds on head, scalp, face and eye, which are fire

arm injuries. Counsel for the petitioner has further submitted that as per the OT notes of Paramjit Singh, which is taken as a medico-legal case, Peritomy was done and the petitioner is yet to undergo further surgery for removal of the pellets. Counsel for the petitioner has also referred to MLC summary of PGIMS, Chandigarh from where the petitioner has obtained the entire treatment that the injury sustained by the petitioner was declared grievous in nature.

Counsel for the petitioner has further relied upon the injuries sustained by the other accused as per the MLR to submit that it was the complainant party which was aggressor as it has come to take the forcible possession of the land.

Counsel for the petitioner has further submitted that some of the persons were found to be innocent and the allegations of SC/ST is only against one accused Bhupinder Kaur and not against any other person.

Counsel for the petitioner has referred to an order dated 8.10.2021 passed in CRM-M-42407-2021 vide which the co-accused Jagjit Singh, who also suffered pellet injury in the eye with loss of complete vision of one eye, was granted the concession of interim anticipatory bail noticing the fact that said Jagjit Singh and the petitioner have not been assigned a specific role regarding firing on the complainant party and no specific weapon is shown in the hands of the petitioner. Counsel for the petitioner further submits that even the petitioner has suffered multiple injuries in the incident.

Counsel for the petitioner has relied upon Siddharam Satingappa Mhetre Vs. State of Maharashtra, 2011(2) RCR (Criminal) 126 CRA-S-2271-2010 arising out of SLP (Criminal) No.7615 of 2009, wherein the Hon'ble Supreme Court while dealing with the question of anticipatory bail in a case under Section 302 IPC has laid

down certain parameters. Para 122 of the judgment reads as under :-

*“122. xxxx xxxx xxxx xxxx
vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people. vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
xxxx xxxx xxxx xxxx”*

Counsel for the petitioner has also relied upon Criminal Appeal Nos. 107-109 of 2002 Kanwarlal V. State of M.P., 2002(4) RCR (Criminal) 107, wherein it is observed that the probable conclusion when the two parties came across each other and had a free fight and as a result of which both sides suffered injuries and two persons died, the participants are responsible for their individual act. Counsel for the petitioner has further argued that in such a case, in the implication of petitioner in the aid of Sections 148/149/34 IPC is not made out.

Counsel for the petitioner has also relied upon Gurmit Singh Vs. State of Punjab, 1995(3) RCR (Criminal) 685, wherein the Hon’ble Supreme Court has held that where there is a pre-determined fight between the two sides and it is a case of free fight, the conviction in the aid of Section 34 IPC is liable to be set aside as it is to be seen what offence is committed by the accused individually. Counsel for the petitioner then referred to State of Haryana V. Chandvir, 1996(2) RCR (Criminal) 616, wherein the Hon’ble Supreme Court in case of free fight has held that on the facts and circumstances neither Section 34 nor Section 149 can be applied to any of the accused as the individual role is to be seen.

Counsel for the petitioner has, thus, argued that in

the instant case, neither any specific role is assigned to the petitioner nor any specific weapon is shown and, therefore, considering the fact that it being a case of free fight, the individual role of the petitioner is to be seen at the time of trial.

Learned State counsel, assisted by counsel for the complainant, on the basis of the affidavit of DSP, Sub Division Patti, District Tarn Taran has, however, opposed the prayer. After giving the details of the investigation, it is stated that both the persons were injured due to hit by bullets and sharp edged weapon injuries were caused and were admitted in different hospitals. It is stated that the petitioner was present at the spot and also suffered the injury. At the first instance, the complainant side Dhara Singh, Salwinder Singh and Kulwinder Singh were declared unfit to record their statements and, later on, their statements were recorded and Dhara Singh died during his treatment.

It is also stated that from the petitioner's side, Surjit Singh and Sarwan Singh also suffered injuries as per their MLR and co-accused Jagjit Singh and petitioner Paramjit Singh also suffered injuries over their head and face and both of them remained admitted in PGI, Chandigarh. It is further submitted that during investigation the statement of Salwinder Singh was recorded in which it is stated that he along with Dhara Singh and others were sowing maize crop when the petitioner side stopped them and started firing in the air with their respective weapons. Later on, Paramjit Singh petitioner and Jagjit Singh also came with their respective weapons. In the meantime, Surjit Singh fired two shots with .12 bore gun on his father Dhara Singh, which hit in his stomach and his father fell down when his brother Angrej Singh came forward, then Swaran Singh, Charan Singh and Dilbagh Singh opened fire, which hit on Salwinder Singh and Kulwinder Singh.

Counsel for the petitioner has further argued that the anticipatory bail of co-accused Angrej Singh from the complainant side was dismissed as withdrawn by this Court vide order passed in CRM-M-40848- 2021 on 30.9.2021 and, therefore, the case of the petitioner is on the similar footing and the same be also dismissed.

Counsel for the complainant has also placed on record the postmortem report of Dhara Singh showing 07 injuries and the cause of death is due to haemorrhage and shock of multiple injuries hypoxia which is sufficient to cause death in ordinary course. Counsel has also relied upon the MLR showing that he suffered four bullet injuries.

After hearing counsel for the parties and going through the contents of the FIR, all the relevant documents and the affidavit of the Investigating Officer, it is apparent that neither any specific weapon is assigned to the petitioner nor any specific injury to any of the victim/deceased is assigned either in the FIR or on the statement of Salwinder Singh son of deceased Dhara Singh. Rather, it is stated that at the first instance Sukhraj Singh, Patel Singh, Surjit Singh, Sarwan Singh and Charan Singh reached there and started firing in the air with their respective weapon or in the meantime petitioner-Paramjit Singh and Jagjit Singh also came with their respective weapons. Though specific injuries are assigned to co-accused Sukhraj Singh and Surjit Singh, however, in the affidavit of the DSP, no specific injuries attributed to the petitioner or Jagjit Singh, who has been granted the interim bail by a co-ordinate Bench of this Court vide order dated 8.10.2021 passed in CRM-M-42407 of 2021.”

The said order was later on, confirmed on 06.01.2022.

It is worth noticing that the complainant herein Angrej

Singh has filed SLP (Crl.) No.1387 of 2022, challenging the aforesaid order, before the Hon'ble Supreme Court and the same was dismissed by passing the following order:-

“Permission to file SLP is granted.

The impugned order records as under:

“Learned counsel for the State, on instructions from ASI Nirmal Singh, has not disputed the factual position and submits that the petitioner has joined the investigation and is no more required for any further investigation.:

Mr. Abhimanyu Tewari, learned advocate appearing for the petitioner-complainant submits that no anticipatory bail could have been granted when the allegations made out an offence punishable under Section 3(1)(a) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

However, in view of the observations quoted hereinabove, we see no reason to exercise our jurisdiction under Article 136(1) of the Constitution of India.

The Special Leave Petition is dismissed.

Pending applications, if any, shall stand disposed of.”

It is submitted on behalf of the petitioner that the petitioner Patel Singh has fired a shot in air and was part of the unlawful assembly, which has committed the offence. It is thus, submitted that no specific attribution is attributed to the petitioner and the allegations against the petitioner are identical to the co-accused Angrej Singh.

Reply by way of affidavit of the Deputy Superintendent of Police, Sub-Division Patti, District Tarn Taran, is on record and as per the reply, the FIR was initially registered against 16 persons and the petitioner was not named in the FIR. In the affidavit, after verifying the facts of the case, the details of the investigation carried out by the

police is given and with regard to the petitioner Patel Singh, it is submitted that Salwinder Singh son of the deceased, recorded his statement on 19.05.2021 that on 16.05.2021, he along with his father Dhara Singh, brother Angrej Singh, Jugraj Singh and a relative namely Kulwinder Singh, along with 2-4 other relatives, were sowing crops and while exhorting co-accused Sukhraj Singh, the petitioner and other persons as named in the FIR, started firing in the air with the respective weapon and later on, the fatal injuries were caused by Surjit Singh and Sukhraj Singh as noticed in the aforesaid order.

Counsel for the State has further submitted that as per the verification, the petitioner was present at the spot and has fired in the air as per the statement recorded by Salwinder Singh, after 03 days of the occurrence.

Counsel appearing for the complainant has, however, submitted that the petitioner being part of the unlawful assembly has attacked the complainant side though, it could not be disputed that as per the FIR, the petitioner is not named and his name surfaced after 03 days when the statement of the complainant was recorded.

Counsel for the complainant has also submitted that since the FIR is also registered under Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the anticipatory bail is not maintainable.

In reply, counsel for the petitioner has submitted that since the petitioner was not named in the FIR, therefore, the allegation in the FIR with regard to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, are not sustainable and it will be a matter

of trial as to whether the petitioner has committed any such offence.

After hearing the counsel for the parties, considering the facts and circumstances of the case, the present petition is allowed and the petitioner is directed to appear before the SHO/Investigating Officer to join the investigation within a period of 15 days from today and in the event of his arrest, he shall be enlarged on interim bail, subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of Arresting Officer.

However, the petitioner shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Nothing expressed hereinabove shall be construed as an expression of opinion on merits of the case.

(ARVIND SINGH SANGWAN)
JUDGE

23.02.2022

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