

215 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**CRM-M-13310-2022**  
**Date of Decision: 07.04.2022**

Pardeep Kumar and another ...Petitioners

Versus

State of Punjab and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Bipan Ghai, Sr. Advocate with  
Mr. Paras Talwar, Advocate and  
Mr. P.S. Bindra, Advocate  
for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

Mr. J.K. Singla, Advocate for the complainant.

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**JASGURPREET SINGH PURI, J.(ORAL)**

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioners namely, Pardeep Kumar and Gurdeep Kumar in case/complaint No.65, dated 07.06.2016 (Annexure P-1) titled 'Inderjit Singh versus Jagjit Singh and others' for offences under Sections 302 and 34 of IPC, 1860 registered at Police Station City South Moga, District Moga.

2. It has been submitted by the learned senior counsel that it is a case where against both the petitioners along with two other co-accused an FIR was registered on 13.11.2015 under Section 302 pertaining to an occurrence dated 25.09.2015 regarding the death of one Mohan Singh and thereafter the police made thorough investigation of the present case and all the accused were exonerated by the police including both the petitioners and

MANPREET SINGH  
2022.04.08 17:19 thereafter Section 302 IPC was deleted and Section 304-A IPC was added and  
I attest to the accuracy of  
this order

when the final report was presented before the Court, it was for cancellation of the entire FIR. The said report filed by the police was ultimately accepted and approved by the learned Judicial Magistrate on 27.04.2018. However, in the meantime, a criminal complaint was also moved before the learned Magistrate and in that criminal complaint now summoning orders were issued to the petitioners. The petitioners thereafter moved a petition for grant of anticipatory bail before this Court vide CRM-M-7642-2022, in which the petitioners were granted protection till the time they appear before the learned Chief Judicial Magistrate, Moga in view of the statement made on behalf of the petitioners that they wish to appear before the learned Chief Judicial Magistrate, Moga on the next date of hearing i.e. on 08.03.2022. It was further directed that till 08.03.2022, the petitioners shall not be arrested and in the event of the petitioners filing bail application before the appropriate Court, then the same shall be decided as expeditiously as possible preferably within five days from the date of filing of application for bail. Learned senior counsel further submitted that thereafter the petitioners went to the learned Court of Chief Judicial Magistrate but their application for surrender was declined on the ground that they had come prior to 08.03.2022 and thereafter, the petitioners moved an application under Section 439 Cr.P.C. before the learned Additional Sessions Judge for the grant of regular bail and the same was also declined vide order dated 07.03.2022 (Annexure P-12). While referring to the aforesaid orders, the learned senior counsel has submitted that the regular bail application has been declined on two grounds i.e. firstly, the petitioners have not surrendered and they cannot be considered to be into the deemed custody of the Court and secondly, on merits as well. The bail application was declined by observing that a serious offence has been committed by the accused and due to gravity and seriousness of offence, the petitioners do not

deserve the concession of bail at this stage, Thereafter, the present bail petition has been filed before this Court. He submitted that the occurrence is of the year 2015 and the petitioners have already been exonerated by the police and the report has been accepted by the learned Magistrate and therefore, the petitioners may be considered for the grant of regular bail.

3. On the other hand, learned State counsel has submitted that it is correct that earlier the police had enquired into the matter and has submitted cancellation report, which was ultimately accepted by the learned Magistrate and which has attained finality But in the meantime, a complaint was also moved by the complainant in which the petitioners have now been summoned.

4. Mr. J.K. Singla, Advocate appearing on behalf of the complainant has submitted that so far as the factual position stated by the learned counsel for the petitioners that earlier the police had recommended cancellation report which was accepted by the learned Magistrate is concerned, the same is correct. However, he has submitted that the petitioners ought to have approached the learned Sessions Court first before filing the present petition.

5. I have heard the learned counsel for the parties.

6. The factual position as aforesaid would show that the alleged occurrence had taken place in the year 2015 and all the accused including the petitioner were exonerated and cancellation report was sent to the learned Magistrate, which was ultimately approved and had attained finality as per the learned counsel for the parties. Vide Annexure P-11, this Court had directed the petitioners to surrender but since they had approached the learned Chief Judicial Magistrate prior to the date fixed, they were not permitted to surrender and thereafter, the bail application was filed by the petitioners under Section 439 Cr.P.C., the same was dismissed not only on the ground that there was no deemed custody but also on merits and therefore, the present bail

application before this Court is maintainable.

7. It has been specifically stated by the learned senior counsel that the petitioners have surrendered before the learned Magistrate on 05.04.2022 and both of them are in judicial custody. This submission made by the learned senior counsel has not been denied by the learned Deputy Advocate General, Punjab after obtaining the necessary instructions from ASI Gurcharan Singh.

8. In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to both the petitioners. Consequently, the present petition is allowed and the petitioners shall be released on bail on their furnishing requisite bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

9. It is made clear that the aforesaid observations would not mean anything on the merits of the case, as the same are only for the purpose of deciding the present petition.

**( JASGURPREET SINGH PURI )**  
**JUDGE**

**April 07, 2022**  
Manpreet

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