

CRM-M-37763-2022
Date of decision : 06.09.2022

Versus

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Mr. Amitabh Tewari, Advocate &
Ms. Mahima Gupta, Advocate
for the complainant.

Learned counsel for the petitioner, at the outset, has submitted that a Coordinate Bench of this Court had passed a detailed order dated

16.11.2021 in the case of the co-accused of the petitioner namely Paramjit Singh while granting anticipatory bail to the said Paramjit Singh in case bearing CRM-M-44718-2021 and has submitted that the entire factual background has been noticed in detail in the same. The operative part of the said order is 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(present petitioner), 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-M42407 of 2021.”

Learned counsel for the petitioner has submitted that the abovesaid order was ultimately confirmed on 06.01.2022 and the complainant herein i.e. Angrej Singh 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 that five persons from the side of the petitioner have received serious injuries on vital parts on their body. Reference in this regard has been made to the medical reports/opinion annexed as Annexure P-3 to Annexure P-7. Annexure P-3 is the medico legal case summary with respect to Jagjit Singh, belonging to the party of the petitioner, issued by the PGI, Chandigarh in which it has been stated that on account of the firearm pellet injuries, he has suffered complete loss of vision. Annexure P-4 is also

the medico legal case summary with respect to Paramjit Singh, belonging to the party of the petitioner, issued by PGI Chandigarh indicating that he had received a grievous firearm injury on his left eye. Annexure P-5 is the MLR with respect to Surjit Singh who also belongs to the party of the petitioner and who had received 5 injuries, out of which 2 were firearm injuries. Annexure P-6 is the MLR with respect to Sarwan Singh who had received two injuries, one of which was a lacerated wound on the left parietal region of skull and the same was stated to be muscle deep with fresh bleeding present. Annexure P-7 is the MLR with respect to Baljit Singh, who also belongs to the party of the petitioner and had suffered two firearm injuries and the said Baljit Singh belongs to Majbi Sikh religion/caste as is apparent from the said MLR. It is also submitted that initially in the FIR, no specific role had been attributed to the present petitioner and it was only subsequently, 2 days after the registration of the FIR, that the statement of Salwinder Singh (belonging to the opposite party) had been recorded to the effect that the injury caused to the deceased had been inflicted by co-accused Sukhraj Singh and co-accused Surjit Singh and it was also alleged therein that the present petitioner, Charan Singh, Sarwan Singh and Dilbag Singh had fired with their respective weapons at the complainant Salwinder Singh, his relative Kulwinder Singh and Shubh with the 12 bore firearm. In the anticipatory bail application filed by co-accused Charan Singh, notice of motion was issued by a Coordinate Bench of this Court and interim protection has been granted on 24.05.2022 and the said case is now pending for 06.09.2022 and has fairly submitted that in the said case, the said Charan Singh has been directed to handover a demand draft in favour of Salwinder Singh. It is contended the petitioner in the present case is seeking regular

bail and he has been in custody since 17.02.2022 and the challan has already been presented and there are as many as 40 prosecution witnesses, out of whom none have been examined and thus, the trial is likely to take time.

Learned counsel for the petitioner submitted that there is no recovery of any gun from the present petitioner and recovery of one stick/dang has been made from the present petitioner. It is contended that even the co-accused Patel Singh, who was also stated to be armed with a firearm, has been granted anticipatory bail by the coordinate Bench of this Court vide order dated 23.02.2022 in CRM-M-3006-2022 and even the said order has been upheld by the Hon'ble Supreme Court vide order dated 11.03.2022 (Annexure P-21) (page 124 of the paperbook). It is further contended that the persons from the party of Dhara Singh (opposite party) i.e. Salwinder Singh and Kulwinder Singh have also been granted the concession of regular bail and anticipatory bail respectively, vide orders dated 24.05.2022 passed in CRM-M-54583-2021 (page 111 of the paperbook) and order dated 28.04.2022 passed in CRM-M-53317-2021 (page 117 of the paperbook), respectively. It is submitted that Salwinder Singh had fired upon Jagjit Singh, as a result of which he had suffered a firearm injury and was granted bail after a custody period of 9 months. It has although, been fairly pointed out that he was asked to pay an amount of Rs.2 lakhs to the victim. It is contended that as far as Kulwinder Singh is concerned, the allegation against him was that he was armed with a 32 bore revolver and had shot at Surjit Singh on his right hand, however, he was granted the concession of anticipatory bail.

Learned counsel for the petitioner has further submitted that the allegations with respect to using derogatory words are qua Bhupinder Kaur

@ Bholi, who has already been exonerated by the investigating agency. It is also submitted that the said offence is not made out as even the members of the petitioner's party such as Baljit Singh, who had also received firearm injuries, belongs to a scheduled caste as is apparent from the MLR of the said Baljit Singh (Annexure P-7) (page 35 of the paperbook). It is contended that neither in the statement of Salwinder Singh, nor in the FIR, there are any allegations to the effect that the petitioner or the other accused persons had knowledge that Salwinder Singh or any person from the side of Dhara Singh belonged to a scheduled caste. It is argued that a perusal of the facts of the present case would reveal that there was a free fight between the two sides and thus, individual roles should be ultimately considered and as per the prosecution case, no injury had been attributed to the petitioner with respect to the deceased. It is submitted that in case of a free fight, Sections 148, 149 and 37 cannot be invoked. It is reiterated that the party of Dhara Singh, was the aggressor party. It is also submitted that the petitioner is not involved in any other case.

Learned State counsel and the counsel for the complainant have opposed the present application for regular bail and have submitted that in the present case, the petitioner was a part of an unlawful assembly and thus, would be liable for the offences committed by the other co-accused also. It is further submitted that a specific role has been attributed to the petitioner by Salwinder Singh in his statement recorded after the registration of the FIR, in which it has been specifically averred that the present petitioner, along with 3 other persons, had fired with their respective weapons at Salwinder Singh, Kulwinder Singh and Shubh. It is contended that recovery of dang has been made from the present petitioner. It is further contended that

Hon'ble Supreme Court had upheld the orders of the Coordinate Bench of this Court granting anticipatory bail in cases where the attribution was of firing in the air or where mere presence of the accused was alleged.

This Court has heard learned counsel for the parties and has perused the paperbook.

A perusal of the record would bring out the following facts:-

- (i) The fight in the present case had taken place on account of a land dispute in village Cheema Kalan between two parties, one being the party of Dhara Singh (opposite side) and the other being the party of Charan Singh; (petitioner's side).
- (ii) The FIR in the present case was registered by SI Nirmal Singh on 17.05.2021 (Annexure P-1) wherein he had specifically mentioned that both the parties, each consisting of a large number of persons, were present at the place of occurrence and several persons from both sides, were injured.
- (iii) On the statement of Salwinder Singh, recorded after 2 days of the registration of the FIR and 3 days of the occurrence, several persons, including the present petitioner, were nominated as accused persons.
- (iv) The cross version was recorded on the statement of Surjit Singh who had also nominated several persons to be accused persons from the side of Dhara Singh (opposite party).
- (v) From the side of the petitioner, 5 persons have been granted the concession of anticipatory bail, the details of which have been given in the following chart:-

Sr. No.	Annex./pg.	Case No.	Name	Role Ascribed:
1	P-9/Pg.53	CRM-M-8510/2022 Interim protection granted and the said case was fixed for 06.09.2022 with the condition that he would pay Rs.5 lakhs to the victim.(made absolute on 6.9.22)	Charan Singh	Identical role as petitioner: Shot at Salwinder Singh, Kulwinder Singh and Shubh.
2.	P-14/Pg.100	CRM-M-15959/2022	Swaran Singh @ Gandhi Singh	Fired in the air.
3.	P-13/Pg.90	CRM-M-3006/2022	Patel Singh	Fired in the air.
4.	P-12/Pg.79	CRM-M-44718/2021 Interim order made absolute on 06.01.2022.	Paramjit Singh	No specific role/weapon ascribed. Sustained injuries on left eye (page 23).
5.	P-11/Pg.77	CRM-M-42407/2021	Jagjit Singh	No specific role/weapon ascribed. Sustained injuries resulting in 100% loss of vision at age of 35 (page 22)

It would be relevant to note that the orders passed in fvour of Patel Singh and Paramjit Singh were challenged before the Hon'ble Supreme Court and the same have been upheld and the details of the same are given in the following chart:-

Sr. No.	Annex./pg.	Case No.	Name of accused	
1	P-21/ Pg.124	SLP (Criminal) Diary No. 6054/2022	Patel Singh	Order passed in CRM-M-3006/2022 (Annexure P-13) tested and affirmed by the Hon'ble Supreme Court of India.
2	P-20/122	SLP (Criminal) Diary No. 1387/2022	Paramjit Singh	Order passed in CRM-M-44718/2022 (Annexure P-12) tested and affirmed by the Hon'ble Supreme Court of India.

From the side of Dhara Singh (opposite side), 3 persons have been granted the concession of anticipatory bail. The details regarding the same have been given in the chart hereinbelow:-

Sr. No.	Annex./pg.	Case No.	Name	Role Ascribed:
1	P-17/Pg.115	CRM-M-51742/2021	Angrej Singh	Armed with Daang and gave daang blows on left arm and thumb of left hand of Surjit Singh (Page 24)
2	P-18/Pg.117	CRM-M-53317/2021	Kulwinder Singh	Armed with 32 Bore revolver and fired shots at Surjit Singh on right thigh (page 24)
3	P-19/Pg.119	CRM-M-17843/2022	Jugraj Singh	Armed with Takua and also fired shots at Baljit Singh

One person from the party of Dhara Singh (opposite party) has been granted the concession of regular bail and the details regarding the same has been given in the chart hereinbelow:-

Sr. No.	Annex./pg.	Case No.	Name	Role Ascribed:
1	P-16/Pg111	CRM-M-54583/2021	Salwinder Singh	Fired upon Jagjit Singh, who suffered complete blindness as a result of the firearm injuries. Granted Regular Bail after custody of 9 months and on the condition that he would pay Rs.2 lakh to the victim.

From the above charts, it is apparent that accused from both the sides, who had fired and had been attributed firearm injuries, have been granted anticipatory bail/regular bail.

(vi)In the FIR, no specific injury has been attributed to the present petitioner and even in the statement of Salwinder Singh recorded after 3 days of the occurrence, no injury with respect to the deceased has been attributed to the petitioner;

(vii) In the statement of Salwinder Singh, the petitioner, alongwith 3 more persons has been jointly attributed injuries with respect to Salwinder Singh, Kulwinder Singh and Shubh with 12 bore gun;

(viii) 5 persons have been injured from the side of the petitioner.

Reference in this regard may be made to the medical reports/opinion annexed as Annexure P-3 to Annexure P-7. Annexure P-3 is the medico legal case summary with respect to Jagjit Singh, belonging to the party of the petitioner, issued by the PGI, Chandigarh in which it has been stated that on account of the firearm-pellet injuries, he has suffered a complete loss of vision. Annexure P-4 is the medico legal case summary with respect to Paramjit Singh, belonging to the party of the petitioner, issued by PGI Chandigarh, indicating that he had received a grievous firearm injury on the left eye. Annexure P-5 is the MLR with respect to Surjit Singh, who also belongs to the party of the petitioner, and who had received 5 injuries out of which 2 were firearm injuries. Annexure P-6 is the MLR with respect to Sarwan Singh who had received two injuries, one of which was a lacerated wound on the left parietal region of skull and the same was stated to be muscle deep with fresh bleeding present. Annexure P-7 is the MLR with respect to Baljit Singh, who belongs to the party of the petitioner and had suffered two firearm injuries and the said Baljit Singh belongs to Majbi Sikh as is apparent from the said MLR.

(ix) A coordinate Bench of this Court in the detailed order dated 23.02.2022 passed in CRM-M-3006/2022, (Page-90) had noticed the order passed in the case of co-accused Paramjit Singh, in which one of the argument of the Ld. Counsel for the petitioner therein, which had

been noticed (page-94) was to the effect that when two parties come across each other and have a free fight and as a result of that, injuries are suffered by both the sides, then the participants would be responsible for their individual act and the Coordinate Bench had thereafter granted anticipatory bail to the said Paramjit Singh, which order was upheld by Hon'ble Supreme Court in SLP (Criminal) No.1387/2022.

- (x) The allegations under Section 3(1)(r) of the Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have not been levelled against the present petitioner and have been levelled only against Bhupinder Kaur, who has already been exonerated by the investigating agency and some persons of the petitioner's party including Baljit Singh are also members of a scheduled caste (Annexure P-7) and there is no allegation made in the statement of Salwinder Singh or in the FIR to the effect that the petitioner or any of the other co-accused was aware of the fact that the complainant Salwinder Singh or any person belonging the party of Dhara Singh belonged to a scheduled caste. At any rate, the allegation under the SC/ST Act has been levelled only against Bhupinder Kaur as has been noticed by the Coordinate Bench in the order dated 23.02.2022 (page-64) and the said order has been upheld by the Hon'ble Supreme Court.
- (xi) The petitioner has been in custody since 17.02.2022 and the challan has already been presented and there are as many as 40 prosecution witnesses, out of whom none have been examined and thus, the trial is likely to take time.

- (xii) The petitioner is not involved in any other case.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

It is made clear, in case, the petitioner threatens or influences any witness, it would be open to the State to move an application for cancellation of the present regular bail granted to the petitioner.

Pending miscellaneous applications, if any, stand disposed of, in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

September 06, 2022
Amandeep

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