

228 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1430-2019 (O&M)

Reserved on: 20.01.2023

Pronounced on:10.03.2023

Harpreet Singh @ Lalli

...Petitioner.

Vs.

State of Punjab and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rajvinder Singh Bains, Advocate,
for the petitioner.

Mr. Ravinder Singh, AAG, Punjab
for respondent No.1-State.

Mr. Chandan Singh, Advocate
for respondent No.2.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of FIR No. 0229 dated 05.10.2018, under Sections 307/34 & 120-B IPC read with Sections 25 & 27 of the Arms Act, registered at Police Station Sadar Ludhiana, District Ludhiana (Annexure P-1/T).

Regarding an occurrence dated 05.10.2018, originally the aforementioned FIR was registered on a statement of even date made by one Surjit Singh, who happened to be real uncle of Manjinder Singh, wherein, name of the petitioner no where surfaced as an accused. Later, a supplementary statement of aforementioned Surjit Singh was recorded on 20.10.2018, wherein, he named the petitioner, alleging his involvement in

the aforementioned incident. The relevant portion from the statement of Surjit Singh as recorded on 20.10.2018 by the Investigating Agency is reproduced hereunder:-

Stated that on 05.10.2018 statement recorded by me on whose basis case No.229 dated 05.10.2018 under Sections 307/34/120-B IPC and Section 25/27/54/59 of the Arms Act, Police Station Sadar, Ludhiana is registered in the series of that it came to my notice that gunshots fired on my nephew and at that time of giving statement I was under immense stress and fear when I registered my statement and later on I came to know that there were also some other persons who were involved their names are Kushvir Singh son of Joginder Singh, Gurmit Singh Shekhon @ Bassi son of Sohan, Harpreet Singh @ Lalli son of Amarpal Singh and Amarpal Singh son of Iqbal Singh, resident of village Lalton Kalan, Gurmit Singh and Jasjit Singh @ Jassu in connivance of the above said Parminder Singh son of Sohan Singh with an unknown person who were sent to fired gunshot on my nephew and I am quite sure that these person are also involved in the above said offence and against whom also legal action may be taken, that I have recorded my statement, read it, listen it, it is correct.”

Thereafter on 10.12.2018, injured Manjinder Singh also got his statement recorded before the Investigating Agency, thereby implicating the petitioner of attributing him a specific role in the incident dated 05.10.2018. Relevant portion from the statement of Manjinder Singh (injured) as recorded on 10.12.2018 is reproduced hereunder for reference:-

“Harpreet Singh @ Lalli son of Jaswinder Singh @ Amra, resident of village Lalton Kalan were standing there and talking, Parminder Singh son of Sohan Singh and Harpreet Singh @ Lalli were sitting on the motorcycle to whom Khushvir Singh who was coming beside me said that in the car Manjinder is there, teach him a lesson today, who should not be left today and after this everybody present there and started abusing me in a very loud voice and everybody raised Lalkara. Due to which I speeded up my car and when I saw from the mirror inside my car towards backside, Harpreet Singh @ Lalli who was riding a motorcycle and Parminder Singh son of Mohan Singh was sitting as a pillion rider and they were coming me and when I stopped my car in front of residence of Jagjinder Singh, Sarpanch in the meantime Parminder Singh stopped his motorcycle towards driver side

of my car and while I was sitting in my car they both with intention to kill me with their weapons fired gunshot and ran towards Lalton Kalan Chowk. As gunshot was hit on my face I was unable to speak in the meanwhile Sarpanch Jagjinder Singh after hearing gunshots came out of his house and as I was injured he took me in his car for treatment towards DMC, Ludhiana.”

Accordingly, the petitioner was also nominated as an accused in the aforementioned FIR on 10.10.2018.

Based thereupon, the investigating agency filed supplementary challan under Section 173 Cr.P.C. Implicating the petitioner for the aforementioned offences on 08.06.2021 and even charges were framed against him by the court of learned Additional Sessions Judge, Ludhiana vide its order dated 08.08.2022.

Being aggrieved thereof, the petitioner approached this Court by way of present petition, with a prayer for quashing of aforementioned FIR, by stating that the occurrence in the present case took place on 05.10.2018, whereas the petitioner went abroad on 03.10.2018 and returned back on 06.10.2018 and thus was never even present in the country. Along with the present petition, the petitioner also appended photocopy of his passport as Annexure P-2 at page 15, so as to show the entries made by the immigration authorities.

During the proceedings, on 14.10.2020, this Court passed the following order:-

“The case has been taken up for hearing through video conferencing.

Learned counsel for the applicant-petitioner does not press the present application.

Dismissed as not pressed.

The case be listed on 12.11.2020 i.e. the date already fixed.

Additional reply/status report be filed by respondent No.1-State on that date particularly with reference to the averments made by the petitioner that on the

date of occurrence the petitioner was in Dubai.”

In response, the respondent-State filed an affidavit of Assistant Commissioner of Police (South), Ludhiana submitting that the petitioner left India on 03.10.2018 and returned back on 06.10.2018. Relevant paragraph 3 of the aforesaid affidavit is reproduced hereunder for reference:-

“That in compliance to the said order of this Hon'ble Court, it is respectfully submitted that in order to know whether the petitioner was in Dubai on the date of occurrence, a letter was sent by the Commissioner of Police, Ludhiana to the Deputy Director, Bureau of Immigration, Govt. of India, New Delhi and the Intelligence Bureau sent the Travel Detail of the passport of the petitioner in which it has been mentioned that on 03.10.2018, the petitioner had gone to United Arab Emirates and returned on 06.10.2018. The Printout of the said Travel History of the petitioner annexed hereto as Annexure R-1. In the said Travel story, earlier the petitioner had gone to Thailand on 15.08.2018 and returned on 24.08.2018.”

Referring to the entries made by the immigration authorities on the passport of the petitioner, besides, the affidavit dated 11.11.2020, filed on behalf of the respondent-State, learned counsel for the petitioner submits that the implication of the petitioner in the aforementioned FIR is merely on account of some political vendetta. Learned counsel for the petitioner further submits that the petitioner was not even present in the country, what to talk of his presence in the village on the date of alleged incident. Pointing out to the statement of the complainant made on 20.10.2018 as well as the statement dated 10.12.2018 made at the instance of injured, learned counsel for the petitioner submits that there was even no allegation at all levelled against him as regards any kind of conspiracy on his part and thus, prayed for quashing of FIR.

On the other hand, learned counsel for the complainant/respondent No.2 vehemently argued that from the perusal of

statement dated 20.10.2018 made by the complainant as well as the statement dated 10.12.2018 made at the instance of injured himself, it can be made out that the petitioner was present in the village and he was the one, who intercepted the vehicle of the injured and fired shots at him. To the similar effect, learned State counsel submitted that the challan in the present case already stands presented against the petitioner upon thorough investigation of the allegations levelled at the instance of respondent No.2. A legal objection to the maintainability of the present petition was raised at the instance of respondents by stating that during pendency of the present petition, even charges were framed against the petitioner by the court of learned Additional Sessions Judge vide order dated 08.08.2022. In this regard, learned counsel for respondent No.2 referred to the decisions passed by the Hon'ble the Supreme Court, in case titled as ***State of A.P. vs. Gourishetty Mahesh and others, 2010 (11) SCC 226*** and ***“Shaikh Sattar vs. State of Maharashtra, 2010 AIR (Supreme Court) 3320***, so as to contend that while exercising powers under Section 482 Cr.P.C., the allegations levelled in the FIR are to be taken at face value and plea of *alibi* has to be proved in the trial only by leading positive evidence and cannot be prejudged at the stage of invocation of Section 482 Cr.P.C.

I have heard learned counsel for the parties and gone through the paper book. There is no shying away from the legal proposition that plea of *alibi* is a rule of evidence and it has to be proved by the accused at the time of trial to claim its benefit. However, in the facts and circumstances of the present case, it is more than apparent from the documents like tickets, passport (including the entries made therein), which are public in nature, that petitioner was in Dubai on the date of alleged incident. In addition to

that, these entries has been confirmed by the state itself in its affidavit dated 11.11.2020 and Annexure R-1 has been brought on record showing travel history of the petitioner which conclusively shows that petitioner departed for Dubai on 03.10.2018 and arrived back in India on 06.10.2018. In fact, the investigating agency itself has brought uncontroverted material on record, thereby leaving no doubt regarding the absence of the petitioner from the place of incident at the time of alleged offence.

Even the complainant/respondent has been conscious of the above mentioned facts and in his written reply and arguments, his thrust has been upon 120-B IPC to implicate the petitioner as a conspirator and it has been repetitively stated in the written reply that it is the petitioner who masterminded the occurrence.

At this stage, it would be appropriate to take notice of the events in the present case. In the complaint/ FIR dated 05.10.2018, petitioner was not named though name of 7-8 other persons were mentioned. The name of the petitioner came to light only on 20.10.2018, when in the supplementary statement made by the complainant-Surjit, allegations were made against him and several others to insinuate conspiracy. However, in statement dated 10.12.2018 by the injured, specific role was attributed to the petitioner that he was one amongst the two persons on motorbike, who fired on the injured and he saw them from the back mirror of the car. Allegations regarding firing by the petitioner were made by another witness Jagjinder Singh as well. Though, in light of the passport entries/ tickets of the petitioner for his visit to Dubai, even respondent No.2-complainant tried to downplay the aforementioned statement given by the injured before the police by stating that the same was given being heavily under the influence of medicines and

not in a fit state of mind to record the statement and his signature were taken by the police coercively.

Faced with the aforesaid situation, the only pertinent question which requires answer is that would it be in the interest of justice to allow the criminal proceedings to continue against the petitioner particularly when the allegations patently appear to be frivolous. A complete overview of the sequence of events reveals that allegations under Section 307 IPC are not made out against the present petitioner and the only allegations standing against him are for 120-B IPC, to which, learned counsel for the respondents contend that the petitioner was a participant in the conspiracy designed to kill the injured, however, in the facts of the present case, there is no material on record to connect the petitioner with the alleged conspiracy. In view of the judgments of Hon'ble Apex Court with regard to allegations of "conspiracy", the primary condition to satisfy is the meeting of minds or agreement between the conspirators for the intended object of committing an illegal act. Neither in the challan/report filed under Section 173 of Cr.P.C., nor in the supplementary challan dated 08.06.2021 filed against the petitioner, leaving aside any substantive material, no material at all has been indicated to prima facie connect the petitioner with the alleged conspiracy. This was observed by Hon'ble Apex Court in "**Praveen @ Sonu vs. The State of Haryana**" - [Criminal Appeal No. 1571 of 2021] decided on 07.12.2021 that a few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Learned counsel for the respondent as well as learned State counsel were specifically asked to point out any material in this regard like:-

- Whether any arms has been provided by the petitioner?
- Whether there is any call records with the other accused persons at the relevant time?
- Any other relevant material

But they have not been able to point out any material in this regard so as to suggest slightest of the involvement of the petitioner. It was observed by Hon'ble Apex Court in "**Shafiya Khan @ Shakuntala vs State Of U.P.**" in CRIMINAL APPEAL NO(S). 200 OF 2022 decided on 10.02.2022 that although it is true that it may not be open for the Court to embark upon any enquiry as to the reliability or genuineness of the allegations made in the FIR, but at least there has to be some factual supporting material for what has been alleged in the FIR. Relevant paragraph No.19 from the *Shafiya Khan's* case (supra) is reproduced hereunder:-

"Although it is true that it was not open for the Court to embark upon any enquiry as to the reliability or genuineness of the allegations made in the FIR, but at least there has to be some factual supporting material for what has been alleged in the FIR which is completely missing in the present case and documentary evidence on record clearly supports that her Nikah Nama was duly registered and issued by competent authority and even the charge sheet filed against her does not prima facie discloses how the marriage certificate was forged."

In the present case, just because petitioner belongs to the political opponent group, in the absence of any material to connect him with the present case, he cannot be made liable to face the criminal prosecution, when he was not even in India at the time of alleged occurrence of incident

and there was no material at all against him so as to connect him with the alleged conspiracy.

In view of the discussion held above, FIR No. 0229 dated 05.10.2018, under Sections 307/34 & 120-B IPC read with Sections 25 & 27 of the Arms Act, registered at Police Station Sadar Ludhiana, District Ludhiana (Annexure P-1/T) is quashed qua petitioner and as a consequence all proceedings arising out of this are also quashed qua petitioner.

Pending miscellaneous application(s), if any, shall also stand disposed of.

10.03.2023

sonika

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No