

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

1. CRM-M-16326-2023

Kulwinder Singh @ Kaku Petitioner

Vs.

State of Punjab Respondent

2. CRM-M-5826-2023

Harvinder Singh @ Binder Petitioner

Vs.

State of Punjab Respondent

3. CRM-M-23618-2023

Jagwinder Singh and another Petitioners

Vs.

State of Punjab Respondent

Reserved on: 31.08.2023
Pronounced on: 06.09.2023

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. P.S. Ahluwalia, Advocate, and
Mr. H.S. Randhawa, Advocate,
for the petitioner (in CRM-M-5826-2023)
Mr. A.D. Sukhija, Advocate,
for the petitioner (in CRM-M-16326-2023)
Ms. Malkit Kaur, Advocate,
for the petitioner (in CRM-M-23618-2023)
Mr. Randeep Singh Khaira, DAG, Punjab.
Mr. P.S.Hundal, Sr. Advocate with
Mr. G.D.Hundal, Advocate for the complainant.

DEEPAK GUPTA, J.

This order shall dispose of 3 petitions as titled above, as all of
them pertain to same case arising out of FIR No.5 dated 04.01.2023,

registered at Police Station Zirakpur, District SAS Nagar, under Sections 307, 323, 506, 341, 148 and 149 IPC (Sections 302, 120B IPC added later on).

2. In CRM-M-16326-2023, petitioner Kulwinder Singh @ Kaku and in CRM-M-5826-2023, petitioner Harvinder Singh @ Binder have prayed for grant of anticipatory bail under Section 438 Cr.P.C; whereas in CRM-M-23618-2023, petitioners Jagwinder Singh & Pradeep Masih have prayed for grant of regular bail under Section 439 Cr.P.C.

Prosecution allegations & Investigation:

3. FIR was lodged on the statement of Bahadur Singh (now deceased), aged about 72 years, retired Sub Inspector from Wireless Wing of Police Department, as per which, on 04.01.2023, he was going for morning walk on the outer side of the village. At about 7.45 AM, as he reached near cremation ground, a big luxury car halted in his front and five boys descended from the same, who surrounded him. One of the boys was his co-villager namely, Kulwinder Singh @ Kaku (*petitioner in CRM-M-16326-2023*). All of them were holding iron rods and sharp edged deadly weapons in their hands, who started hurling abuses to him (complainant) and attacked him in life threatening manner. Kulwinder Singh @ Kaku exhorted others not to spare him on that day and attacked sharp edged weapon on his head. As the complainant raised his right hand to save his head, the weapon hit in the centre of his right hand's thumb and fingers, causing deep cut. The other assailants gave several iron rod blows on both his legs, fracturing the same. On shouting of the complainant, several people including his nephew Nirmal Singh reached the spot and he was shifted to Government Medical College & Hospital (GMCH), Sector 32,

Chandigarh, where the statement of injured Bahadur Singh was recorded by ASI Chamkaur Singh, who reached there on getting information about the arrival of the injured. It was also disclosed by injured that on the previous date i.e. 03.01.2023, Harvinder Singh @ Binder (*petitioner in CRM-M-5826-2023*), the brother of Kulwinder Singh @ Kaku had threatened him to teach a lesson for complaining against his family about Sarpanchi. Bahadur Singh also disclosed the reason for the incident to the effect that he was member Panchayat in the last elections, during which Ravneet Kaur wife of Harvinder Singh @ Binder was the Sarpanch and that he as member panchayat had made complaints to the authorities about misappropriation done by Ravneet Kaur and that earlier his nephew had been attacked. It was further disclosed by injured Bahadur Singh that attack was on him with an intention to kill by Kulwinder Singh @ Kaku along with his four unknown accomplices, on the provocation of his brother Harvinder Singh @ Binder and that he could identify the assailants, if produced before him.

(ii) Further prosecution case (as noticed from status report) is that on 16.01.2023, Nirmal Singh made a statement to the police to the effect that he had seen the occurrence, when he was on morning walk on 04.01.2023 and that at that time, Salinder Singh @ Sunder, the father of Kulwinder Singh @ Kaku & Harvinder Singh @ Binder was exhorting his sons and other unidentified persons to kill Bahadur Singh. At this, Salinder Singh @ Sunder was nominated in the case and Section 120B IPC was added. Bahadur Singh was discharged from GMCH, Chandigarh on 08.01.2023. However, on the same night of 08.01.2023, his condition became critical due to which he was admitted in Alchemist Hospital, Panchkula, where he mostly remained in ICU and on ventilator support and

ultimately succumbed to the injuries on 22.02.2023. Postmortem of deceased Bahadur Singh was conducted at Civil Hospital, Dera Bassi on 23.02.2023. Cause of death was stated to **Septicemia and Multiple Organ Dysfunction Syndrome, due to underlying comorbidities, DM II (Diabetes Mellitus of IIInd Grade), CKD (Chronic Kidney Disease), CVA (Cerebro Vascular Accident) and Trauma.** Section 302 IPC was added. On 25.03.2023, on the identification of witness of the crime namely, Nirmal Singh, accused Jagwinder Singh & Pradeep Masih (*petitioners in CRM-M-23618-2023*) were arrested. They suffered disclosed statement. Iron rod and mobile phone used in the crime were recovered from them.

CRM-M-5826-2023

4. Petitioner Harvinder Singh @ Binder was granted interim anticipatory bail vide order dated 03.02.2023 and in the meantime, was directed to join the investigation. However, at the time of passing of that order, Section 302 IPC had not been added. Later on, an application was moved to incorporate Section 302 IPC in the head note as well as prayer clause of the petition. Prayer has now been made to extend the benefit of interim anticipatory bail also for the offence under Section 302 IPC.

CRM-M-16326-2023

5. Petitioner Kulwinder Singh @ Kaku was released on interim anticipatory bail by a Coordinate Bench of this Court vide order dated 31.03.2023.

Contentions on behalf of Harvinder Singh @ Binder (petitioner in CRM-M-5826-2023)

6. On behalf of Harvinder Singh @ Binder, it is contended that he is not named in the FIR to be present at the spot of occurrence on

04.01.2023. The only role attributed to him as per the FIR allegations is that one day prior to the occurrence i.e. on 03.01.2023, he had threatened the complainant. Ld. counsel contends that in the circumstances, petitioner be granted anticipatory bail even for the offence under Section 302 IPC, as he has already joined the investigation. It is also argued by ld. counsel that co-accused Salinder Singh @ Sunder has already been allowed regular bail by this Court, vide order dated 23.03.2023 passed in CRM-M-7920-2023.

Stand of the State (in CRM-M-5826-2023 Harvinder Singh @ Binder)

7. Ld. State counsel has opposed the petition on the ground that though petitioner has joined the investigation, but he is not cooperating in the same, as he is not disclosing the whereabouts of the other co-accused. Still further, it is contended that petitioner had conspired with the co-accused to inflict injuries on the person of the complainant with intention to kill him and that injured later on expired and so, petitioner does not deserve to be given the benefit of anticipatory bail.

Contentions on behalf of Kulwinder Singh @ Kaku (petitioner in CRM-M-16326-2023)

8. (i) On behalf of the petitioner Kulwinder Singh @ Kaku, the main emphasis of ld. counsel is that petitioner has already joined the investigation; that occurrence took place on 04.01.2023 and the only injury attributed to the petitioner is to have hit a sharp edged weapon on the right hand of the injured Bahadur Singh i.e. on non-vital part of the body.

(ii) Ld. counsel contends further that death of Bahadur Singh took place on 22.02.2023 i.e. after 49 days of the occurrence and as per the postmortem report, the cause of death is Septicemia and Multiple Organ Dysfunction Syndrome, due to underlying comorbidities, DM II, CKD,

CVA and Trauma and that there is no connection between injuries allegedly inflicted at the time of occurrence and the cause of death and so, Section 302 IPC is not made out.

Contentions on behalf of Jagwinder Singh & Pradeep Masih (petitioners in CRM-M-23618-2023)

9. Ld. counsel for these petitioners contend that petitioners are not named in the FIR; that they have been arrested after 80 days of the registration of the FIR; that they were never identified by the deceased prior to his death, to be the assailants; that statement of Nirmal Singh was recorded on 16.01.2023 in which also he did not name the petitioners and therefore, said Nirmal Singh could not have identified the petitioners to be assailants, when they were arrested on 25.03.2023. Besides, the same contention is raised as by counsel for the other petitioners, to the effect that cause of death is not linked to the injuries inflicted in the alleged occurrence.

Reply of the State/complainee

10. (i) Ld. State counsel along with counsel for the complainant strongly opposed all the petitions.

(ii) Opposing the petition of Harvinder Singh @ Binder, though it is conceded that he was not present at the spot of occurrence on 04.01.2023, but he is alleged to be the main conspirator, as he had threatened the deceased one day prior to the occurrence, as is referred in the FIR itself. Ld. counsel for the complainant specifically pointed out towards the reasons for attack, inasmuch as the injured Bahadur Singh (now deceased) had made a complaint in the capacity of member Panchayat against Harvinder Singh's wife Ravneet Kaur regarding embezzlement of Panchayat funds, as said

Ravneet Kaur was the Sarpanch of the village. By pointing out towards the gravity of offence, ld. counsel contends that petitioner does not deserve the benefit of anticipatory bail.

(iii) Opposing the petition seeking anticipatory bail by Kulwinder Singh @ Kaku, and petition of Jagwinder Singh & Pradeep Masih seeking regular bail, it is pointed out by ld. counsel for the complainant that occurrence took place on 04.01.2023 and numerous injuries were inflicted on the body of the deceased resulting in fracture of both the legs and in the right hand.

(iv) Pointing out towards the status report submitted by the Police, it is urged that though injured Bahadur Singh was discharged from GMCH, Sector 32, Chandigarh, where he was initially taken, on 08.01.2023, but as his condition became critical, he had to be admitted in Alchemist hospital, Panchkula on the same night on 08.01.2023, where he mostly remained in ICU and on ventilator support and ultimately expired on 22.02.2023.

(v) Further pointing out towards the discharge and follow card, issued by GMCH, Sector 32, Chandigarh, it is urged that at the time of admission on 04.01.2023, Kidney test of the injured Bahadur Singh was normal. The death summary prepared at Alchemist Hospital, Panchkula reveals that even on 11.01.2023, his Echo analysis showed normal study. Attention is further drawn towards the fact that it is during treatment that Bahadur Singh had Systole and also developed sudden bradycardia followed by Systole on 17.01.2023. Not only this, bed sores developed during treatment, which is possible only because of prolonged immobilization and that it could also be the reason for Septicemia.

(vi) Still further, it is argued that after the death of Bahadur Singh, his statement made to the police, which is the basis of the FIR, is to be treated as his dying declaration. There is clear connection between death due to Septicemia and the Multiple Organ Dysfunction Syndrome, and the injuries inflicted upon the person of the deceased on 04.01.2023 and so, in all these circumstances and keeping the gravity of offence in mind, the petitioners do not deserve to be given benefit of bail.

11. Refuting the aforesaid contentions, Id counsel for the petitioners reiterated that cause of death being Septicemia and Multiple Organ Dysfunction Syndrome, due to underlying comorbidities, DM II, CKD, CVA and Trauma, which cannot be connected with injuries, Section 302 IPC is not attracted.

12. I have considered submissions of both the sides and have appraised the record carefully.

Harvinder Singh @ Binder (petitioner in CRM-M-5826-2013)

13. As far as the case of the petitioner Harvinder Singh @ Binder is concerned, it is entirely on different footing comparing to the other petitioners. Occurrence took place on 04.01.2023 at about 7.45 AM and admittedly, at the time of occurrence, petitioner Harvinder Singh @ Binder was not present at the spot. As per the allegations contained in the FIR, the only role attributed to the petitioner is that one day prior to the occurrence i.e. on 03.01.2023, he had threatened the complainant-injured (now deceased).

14. Admittedly, said petitioner Harvinder Singh @ Binder has already joined the investigation pursuant to the order dated 03.02.2023 passed by this Court. The contention of the Id. State counsel that petitioner

is not cooperating by not disclosing the whereabouts of other co-accused, cannot be a reason to decline the anticipatory bail, having regard to the fact that petitioner being not present at the spot of occurrence, cannot be in a position to disclose about the whereabouts of other assailants.

15. Considering aforesaid circumstances, but without commenting anything further on the merits of the case, the order dated 03.02.2023, passed in CRM-M-5826-2023, whereby interim anticipatory bail was granted to the petitioner Harwinder, is hereby made absolute, subject to the conditions that said petitioner shall continue to join investigation as and when required and will abide by others conditions contained in Section 438 (2) CrPC. It is further subject to the condition that petitioner shall not make any attempt to approach any of the witnesses pertaining to the case.

Kulwinder Singh @ Kaku (petitioner in CRM-16326-2023)

16. Coming to the case of petitioner Kulwinder Singh @ Kaku, he is specifically named in the FIR, who along with four others, armed with deadly weapons, had opened attack upon Bahadur Singh. It is said petitioner Kulwinder Singh @ Kaku, who by making exhortation not to spare Bahadur Singh on that day, attacked on the head of Bahadur Singh with the sharp edged weapon. It is only due to the fact that Bahadur Singh raised his right hand that the weapon hit in the centre of his right hand thumb & fingers. Other assailants also attacked several times with iron rods, fracturing both the legs.

17. Bahadur Singh in injured condition was admittedly initially taken to GMCH, Sector 32, Chandigarh on 04.01.2023. The discharge and follow up card issued by said Hospital reveals that at the time of his admission, his kidney test was normal. However, fractures were found on

his right hand and his legs. He was discharged on 08.01.2023 with normal status with direction to follow up after two weeks.

18. Though the death summary issued by Alchemist Hospital, Panchkula reveals the date of admission of the deceased Bahadur Singh to be 09.01.2023 in that hospital, but as per the status report filed by the police, Bahadur Singh was admitted in the Alchemist Hospital, Panchkula on the night of 08.01.2023 itself, as his condition had become critical. Detailed course provided during the hospital stay of Bahadur Singh at Alchemist Hospital, Panchkula along with procedure/surgery referred in the death summary, would reveal that his Echo showed normal study on 11.01.2023. It is during treatment that he suffered Systole and also developed bradycardia. Bed sores also developed. Most of the time during his stay in Alchemist Hospital, Panchkula, Bahadur was in ICU and on ventilator and ultimately he succumbed to the injuries on 22.02.2023. The cause of death as mentioned in the death summary prepared in the Alchemist Hospital, Panchkula is Sepsis/MODS; A/H/O trauma i.e. right tibia, left medial condyle of femur, chronic kidney disease and diabetes Mellitus Type 2.

19. The postmortem examination was conducted at Civil Hospital, Dera Bassi, as per which there were as many as 11 injuries on his person. The cause of death mentioned in the postmortem report is as under:

“As per postmortem findings and the hospital record, the cause of death is Septicemia and Multiple Organ Dysfunction Syndrome, due to underlying comorbidities, DM II, CKD, CVA and Trauma.”

20. In CRM-M-23618-2023, this Court directed the respondent/State to obtain the medical opinion to clarify as to whether

Septicemia and Multiple Organ Dysfunction Syndrome as mentioned in the postmortem report of the deceased could be possible due to injuries suffered by the deceased. The respondent/State placed on record report of SMO, Civil Hospital, Dera Bassi dated 16.05.2023, as per which the Board of Doctors was constituted for this purpose and it gave its opinion as under: -

“Septicemia and MODS due to trauma could be possible in this particular case as the deceased had multiple co-morbidities (DM II, CKD, CVA). Otherwise such a trauma is less likely to cause Septicemia and MODS.”

21. In view of the above said report, it cannot be concluded at this stage, as to whether the cause of death is only the injuries suffered by deceased Bahadur Singh on 04.01.2023. At the same time, this Court cannot ignore that his kidney function was normal at the time of admission in hospital on 4.1.2023. His Echo study was normal. He remained in hospital right from the date of occurrence till his death. During the treatment, he had developed bed sores, which is possible because of the prolonged immobilization and that could also be a reason for Septicemia. All this will be a matter of trial based upon the medical evidence. Similarly, it is a moot point as to whether the statement of injured Bahadur Singh can be treated as a dying declaration or not. However, having regard to the role attributed to the petitioner Kulwinder Singh @ Kaku and the gravity of offence, but without commenting anything further on the merits of the case, said petitioner does not deserve to be given benefit of anticipatory bail.

As such CRM-M-16326-2023 is dismissed.

Jagwinder Singh & Pradeep Masih (Petitioners IN CRM-M-23618-2023)

22. Coming to the case of Jagwinder Singh and Pradeep Masih, no doubt that they have been arrested on the identification of Nirmal Singh, the nephew of deceased Bahadur Singh on 25.03.2023, but as per the statement of said Nirmal Singh made on 16.01.2023, he had witnessed the occurrence, as he was also on the morning walk at that time. There could be no question of identification of the said petitioners by the deceased because these petitioners were arrested after the death of Bahadur Singh. These petitioners, as per the investigation, participated in the occurrence along with Kulwinder Singh @ Kaku.

23. In view of the aforesaid circumstances and also the reasons as discussed above in respect of cause of death, but without commenting anything further on the merits of the case, none of these petitioners Jagwinder Singh and Pradeep Masih deserve to be released on regular bail.

Therefore, CRM-M-23618-2023 is also dismissed.

Pending application(s), if any, shall stands disposed of.

A photocopy of this order be placed on the files of other connected cases.

06.09.2023
Vivek

(DEEPAK GUPTA)
JUDGE

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No