

CRM-M-45682-2022 (O&M)

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(219)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45682-2022 (O&M)
Date of Decision: 31.07.2023

SURJIT SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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

Ms. Ramta K Chaudhary, DAG, Punjab.

Mr. Veneet Sharma, Advocate
for the complainant.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.58 dated 17.05.2021 (Annexure P-1) registered under Sections 302, 307, 326, 323, 324, 427, 148, 149 IPC, 1860, Sections 25/27/54/59 of the Arms Act, 1959 and Sections 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989) at Police Station Sadar Patti, District Tarn Taran.

2. The present case came to be registered on the basis of a Ruqa sent by SI Nirmal Singh wherein it was alleged that a mutual fight had taken place between two parties i.e. Dhara Singh and Charanjit Singh. It was alleged that both the sides had attacked each and other and had received

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injuries in the occurrence. The relevant translated version of the FIR is reproduced hereinbelow:-

“SHO P.S. Sadar Patti, Jai Hind, Yesterday, on 16.05.2021 at around 05:30 p.m., I/SI along with ASI Baldev Singh 1809, ASI Jinder Singh 904, HC Baldev Singh 479, CT Navkarandeep Singh 753, PHG Dalbir Singh 4033, PHG Jaswinder Singh 4078 on official vehicle No. PB 46 W 1812 being driven by driver HC Harbhajan Singh 197 were present at Chowk Chuslewad in the P.S. jurisdiction in connection with gashat when I had received information through Control Room that there is land dispute in Village Cheema Kalan between Dhara Singh S/o Tarlok Singh and Charan Singh S/o Dayal Singh party. Dhara Singh S/o Tarlok Singh's party is trying to plough the land and Charan Singh's party is trying to stop ploughing and a mutual fight is taking place between both of these parties and bullets are being fired from both sides. On receiving this information, I/SI along with colleagues had reached Village Cheema Kalan where Dhara Singh S/o Tarlok Singh and his sons Salwinder Singh, Jugraj Singh, Angrej Singh and other 25-30 unknown persons who were armed with guns, pistols, swords and other sharp-edged weapons and Rashpal Singh S/o Pritam Singh Jatt R/o Cheema Kalan were ploughing the land with his tractor Mahindra color red and the second party Charan Singh S/o Dayal Singh and along with them his sons Surjit Singh, Ranjit Singh and Charan Singh's brother Dilbagh Singh, Gandhi Singh, Sarwan Singh, Dharam Singh, Jagjit Singh, Paramjit Singh and other 10-12 unknown persons who were armed with 12 bore guns, pistols, swords and sharp-edged weapons, who were mutually fighting regarding ploughing the land and stopping from ploughing the land and bullets were being fired on each other. When the police party had reached the spot

then the persons of both of these parties along with their respective weapons had sped away from the spot. The persons of both parties have got injured due to being hit with bullets and for incurring injuries with sharp-edged weapons, whom, their relatives had arranged for the conveyances and had taken them to different hospitals for treatment. In front of me Dhara Singh, Salwinder Singh residents of Cheema Kalan and Kulwinder Singh S/o Harbhajan Singh R/o Fatehgarh Sabhra were having injury marks and blood was oozing out and the second party's Surjit Singh, Sarwan Singh, Jagjit Singh, Paramjit Singh and Baljit Singh had injury marks and blood was oozing out. Today, on 17.05.2021, I/SI along with ASI Darshan Singh 1522, ASI Baldev Singh 1809, HC Baldev Singh 479, CT Gurpreet Singh 1544, PHG Dalbir Singh 4033 had reached Amandeep Hospital, Amritsar for taking down the statement of injured Dhara Singh, Salwinder Singh and Kulwinder Singh, where three written applications were given to the doctor for taking his opinion about their being fit or unfit for giving statement wherein the doctor had written about all the aforesaid three injured to be unfit for giving statement. The injured did not had any relative present near them. No MLRs in respect of the injured of the second party have been received yet. Both of them, Dhara Singh party and Charan Singh party had fired direct bullets on each other with the intention to kill each other with regard to the land dispute and had attacked on persons of each other's party with sharp-edged weapons and daangs, sotis and have caused injuries, due to which they have committed an offence U/S 307,324,323,148,149 IPC 25, 27, 54. 59 Arms Act. Hence this writing is sent by hand through PHG Dalbir Singh 4033 to the P.S. Sadar Patti for getting registered a case against all the aforesaid persons. After registering the case the file number

may be intimated. Special Reports may be issued and sent to the senior officers. The Control Room may be informed. Sh. Harinder Singh, INSP/SHO was apprized with all these circumstances. On receipt of MLRS of both the parties, the statements of the injured will be obtained. I/SI along with colleagues proceed towards the scene of crime for further investigation. Sd/- Nirmal Singh, S.I., P.S. Sadar Patti 17.05.2021. At Chowk Chuslewad Time: 03:25 p.m. Today at Police Station: At present on receipt of aforesaid writing at the Police Station the aforesaid case for the above mentioned offence was registered and the original writing along with copy of the FIR is sent by hand through the PHG to the Sion the spot for further investigation. The Control Room is being informed through email. Special Reports, after being issued, are being sent by hand through ASI Nirmal Singh 709/TT to the senior officers.

Takmeel Report No. 29 Time: 04:35 p.m. Date 17.05.2021."

3. As many as 16 persons were nominated as accused by name from both sides. Pursuant to the registration of the FIR, two versions came to be recorded by the Investigating Agency. One version came to be recorded on the basis of the statement made by Salwinder Singh son of Dhara Singh, two days after the registration of the FIR and the same is reproduced hereinbelow:-

"Statement of Salwinder Singh S/o Dhara Singh S/o Tarlok Singh Cheema Kalan, P.S. Sadar Patti, District Tarn Taran, age around 36 years. Stated that I am resident of the above mentioned address and do labour work and we had bought from our village's Maninder Raj Singh S/o Hardeep Singh R/o Cheema Kalan around 04 killa 1 kanal 15 marla land and on 16.05.2021 at around 5/5:30, I, my father Dhara

Singh S/o Tarlok Singh, my brother Angrej Singh, Jugraj Singh and our relative Kulwinder Singh S/o Harbhajan Singh R/o FatehgarhSabhra, Shubh R/o Bhikhiwind and 2/4 other relatives were sowing makki crop in our land, when in the meantime, while exhorting, Sukhraj Singh S/o Dilbagh Singh, Patel Singh S/o Swaran Singh alias Gandhi, Surjit Singh S/o Charan Singh, Sarwan Singh S/o Dayal Singh, Dharam Singh S/o Dayal Singh, Charan Singh S/o Dayal Singh, Dilbagh Singh S/o Dayal Singh, on seeing us, had started firing in the air with their respective weapons and in the meantime only Paramjit Singh S/o Dharam Singh and Jagjit Singh S/o Karam Singh all residents of Cheema Kalan had also came there taking along their respective weapons. My father had stopped them from coming ahead. On which Sukhraj Singh had attacked with his hand-held pistol on my father Dhara Singh which had hit him on the bicep of his left arm and in the stomach. In the meantime, Surjit Singh had fired twice with his hand held 12 bore gun towards my father with the intention to kill him which had hit him in his stomach and he had fell down on the land. For saving him, I and my brother Angrej Singh had came forward, on which Sarwan Singh S/o Dayal Singh, Dharam Singh S/o Dayal Singh, Charan Singh S/o Dayal Singh and Dilbagh Singh S/o Dayal Singh had fired with their respective weapons on me and my relative Kulwinder Singh and Shubh with the fire of 12 bore. The bullet sprinklers had hit me on the wrist of my left arm and in stomach and in right eye of Kulwinder Singh and the bullet sprinklers had also hit Shubh on his body. We had shouted 'maar ditta...maar ditta', on which the villagers had started gathering there. On seeing people gathering all the aforesaid attackers along with their respective weapons, while threatening and hurling abuses, had sped away from the spot.

There is Bhupinder Kaur alias Bholi W/o Kulwant Singh's house near our land only. When we were ploughing the land then Bhupinder Kaur had exhorted and said 'kuttechudeyo...main tuhanu eh jameennahinvaahandeni.' Bhupinder Kaur had only provoked Charan Singh party on phone that 'tuhadijameenchudeyvaahijaande ne...tuseen aa keohna nu roko..' Strict legal action may be taken against them and justice may be given to us. For being hit with bullets and due to injuries my father who was admitted in Amandeep Hospital, Amritsar has died during treatment. I have got written my statement to you, heard and found to be correct. SD/- Salwinder Singh".

4. A cross-version came to be recorded on the basis of the statement made by the present petitioner vide DDR GD No.27 dated 22.05.2021 (Annexure P-4).

5. The learned counsel for the petitioner contends that as per the statement of Salwinder Singh, the petitioner and his co-accused Sukhraj Singh had fired at Dhara Singh. It was alleged that the petitioner had fired twice with a 12 bore gun towards Dhara Singh which had hit his stomach. However, as per the report under Section 173 Cr.P.C., the petitioner had used a 12 bore rifle during the occurrence belonging to his paternal uncle Dilbagh Singh whereas the licenced 32 bore pistol of the petitioner had been used by his paternal uncle Sarwan Singh. The said weapon stands recovered by the Investigating Agency. He contends that it is a case of version and cross-version. It is yet to be determined which party was the aggressor side and the complainant party had suppressed the origin and genesis of the occurrence as serious injuries on the body of the petitioner and four other co-accused on the

side of the petitioner remain unexplained. No offence under the SC and ST Act was also made out. 8 other co-accused of the petitioner have either been granted the concession of interim anticipatory bail or regular bail. Similarly, in the cross-case registered at the instance of the petitioner, the accused therein have been granted the concession of regular bail/anticipatory bail. In the cases of the two co-accused of the petitioner that had been granted the concession of anticipatory bail namely Paramjit Singh and Patel Singh, SLPs were preferred before the Hon'ble Supreme Court and the same came to be dismissed. During the course of the instant proceedings, this Court had directed the recording of the statement of the complainant vide order dated 25.05.2023. However, neither was the statement of the complainant recorded on 10.07.2023 nor on the next date of hearing i.e. 26.07.2023. As the petitioner was in custody since 22.05.2021 and none of the 40 prosecution witnesses had been examined so far, he was entitled to the concession of bail. Even otherwise, he was ready and willing to compensate the complainant party to the extent of Rs.3,00,000/- towards their medical expenses.

6. On the other hand, the learned State counsel contends that the petitioner is the main accused having caused fatal injuries on the person of the deceased-Dhara Singh. In fact, it was the petitioner party which was the aggressor side. Therefore, he was not entitled to the concession of bail. He, however, concedes that the petitioner is in custody since 22.05.2021, none of the 40 prosecution witnesses including the complainant have been examined till date despite specific orders of this Court and that the petitioner is a first-time offender.

7. The learned counsel for the complainant has vehemently opposed the bail application. He contends that a perusal of the statement of Salwinder Singh from the side of the complainant would clearly establish that the petitioner party was the aggressor side and the petitioner was the main accused. Multiple persons from the side of the complainant had received gunshot injuries. Therefore, the petitioner was not entitled to the concession of bail.

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

9. This Court while granting bail to Sarwan Singh, a co-accused of the petitioner, held as under:-

“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, including the present petitioner 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.54	CRM-M8510/2022 Interim protection granted and the said case is fixed for 06.09.2022 with the condition that he would pay Rs.5 lakhs to the victim.	Charan Singh	Identical role as petitioner: Shot at Salwinder Singh, Kulwinder Singh and Shubh.
2.	P-10/Pg.59	CRM-M15959/2022	Swaran Singh @ Gandhi Singh	Fired in the air
3.	P-11/Pg.61	CRM-M-3006/2022	Patel Singh	Fired in the air.
4.	P12/Pg.71/80	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-13/Pg.82	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 favour 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	
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1	P-18/Pg.95	SLP (Criminal Diary No.6054/2022	Patel Singh	Order passed in CRMM-3006/2022 (Annexure P-11) tested and affirmed by the Hon'ble Supreme Court of India.
2.	-	SLP (Criminal) Diary No. 1387/2022	Paramjit Singh	Order passed in CRMM-44718/2022 (Annexure P-12) tested and affirmed by the Hon'ble Supreme Court of India. (reproduced at pg 68 of paperback

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-15/Pg.88	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-16/Pg.90	CRM-M-53317/2021	Kulwinder Singh	Armed with 32 Bore revolver and fired shots at Surjit Singh on right thigh (page 24)
3	P-17/Pg.92	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:
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1	P-14/Pg.84	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.
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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) No recovery of any weapon has been effected from the present petitioner;

(ix) As per the challan (page 48 of the paperbook), the petitioner has been alleged to have used a licensed 32 bore pistol belonging to Surjit Singh. Thus, there is a contradiction with respect to the weapon allegedly used by the petitioner.

(x) 5 persons have been injured from the side of the petitioner including the petitioner himself. 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 the present petitioner 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.

(xi) A coordinate Bench of this Court in the detailed order dated 23.02.2022 passed in CRM-M-3006/2022, (Page-61) 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-65) 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.

(xii) 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.

(xiii) The petitioner has been in custody since 08.07.2021 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.

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

10. In the instant case, though undoubtedly, the petitioner is the main accused, however, it is a case of version and cross-version with the petitioner along with four of his co-accused having received gunshot injuries. It is yet to be determined as to which party was the aggressor side and as to whether the petitioner and his co-accused acted in their self-defence. Despite specific orders of this Court, the complainant has not come present to depose at the trial. Therefore, till date, none of the 40 prosecution witnesses have been examined. In this factual scenario, the trial of the present case is not likely to be concluded anytime soon. As the petitioner is a first-time offender, his further incarceration is not warranted in view of the fact that he has been in custody since 22.05.2021.

11. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Surjit Singh son of Charan Singh is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

12. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform

in writing each time that he is not involved in any other crime other than the present case.

13. If the petitioner or his family members/associates make any attempt to contact/threaten/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted vide this order.

14. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

15. The petitioner shall also pay a sum of Rs.3,00,000/- as per his undertaking to the injured towards medical expenses.

16. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

31.07.2023

JITESH

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