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

CRM-M-45654-2022 (O&M)

CRM-18864-2023

Date of Decision: 28.04.2023

JARNAIL SINGH @ JALIA

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Himmat Singh Deol, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

Mr. Siddhanth Arora, Advocate
for the complainant.

HARSH BUNGER, J. (ORAL)

CRM-18864-2023

This is an application for placing on record order dated 21.10.2022 passed by learned Sub-Divisional Judicial Magistrate, Sardulgarh as Annexure P-6 and *zimini* orders as Annexure P-7.

For the reasons recorded in the application, the same is allowed. Annexures P-6 and P-7, are taken on record, subject to all just exceptions.

CRM-M-45654-2022

Petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, seeking grant of anticipatory bail in case FIR No.89 dated 05.06.2021, registered under Sections 302 and 323 read with Section 34 of the Indian Penal Code, 1860, at Police Station Sardulgarh, District Mansa (Annexure P-1) as he was summoned under Section 190 of the Code

of Criminal Procedure (for short 'the Cr.P.C.') as additional accused to face trial vide order dated 08.09.2022 passed by the Court of Sub-Divisional Judicial Magistrate, Sardulgarh.

2. Briefly, the above-said FIR was registered on the complaint of one Harwinder Singh son of Gurcharan Singh, stating therein that he is posted as a teacher and also doing the agriculture work and they are two brothers. His elder brother is Jaswinder Singh, who is also doing the agriculture work and their fields are adjoining to each other with a common boundary with their uncle (*Taya*) Karnail Singh. It is stated in the complaint that the complainant along with his brother Jaswinder Singh, had told his cousins namely, Jagsir Singh @ Jagga and Gurdit Singh @ Kala, sons of Karnail Singh, to get the boundary of their fields straightened but neither they were getting the demarcation done nor they were permitting them to straighten the boundary. It is stated that the complainant's brother Jaswinder Singh, had told Jagsir Singh @ Jagga and others, that on the said day i.e. 05.06.2021, they had to straighten the boundary and asked them to come at the spot. When the complainant and his brother-Jaswinder Singh, were plying *suhaga* with their tractor, then at about 10:15 a.m., Gurdit Singh @ Kala son of Karnail Singh and Jarnail Singh @ Jaila son of Lal Singh, residents of Ward No.13, Sardulgarh, reached the fields, where Jagsir Singh @ Jagga was already present and all the three persons came to the fields of the complainant and started abusing them. It is stated that when the complainant got down from the tractor and started talking to them, then Gurdit Singh @ Kala gave 4/5 blows with a *sharp kirch* like thing to his brother Jaswinder Singh, whereupon, Jaswinder Singh fell down. It was alleged in the complaint that Jarnail Singh @ Jaila (petitioner), while standing there kept on raising *lalkara* that today they should not escape

unharmd and finish them. It is stated that when the complainant raised hue and cry, then Gurdit Singh @ Kala and others ran towards their fields along with weapons. It is stated that when Jaswinder Singh, was being taken to the hospital then he passed away on the way near Gaushala, Sardulgarh. Accordingly, the instant case FIR was registered.

3. Learned counsel for the petitioner submits that the petitioner is an old man around 70 years of age and also the real uncle of the accused as well as the complainant party. It is submitted that in the FIR no active role has been attributed to the petitioner except the allegation of *lalkara* only. It is further submitted that the wife of the petitioner namely, Ranjit Kaur had given a representation to the higher authorities, whereupon, an inquiry was conducted vide *Rapat no.69* dated 18.06.2021, wherein the petitioner was found innocent. Thereafter, another representation was given by the complainant party and the petitioner was arrested on 02.04.2022. It is stated that while the petitioner was in custody, investigation of the case was conducted by Bureau of Investigation and after thorough investigation, found the petitioner as innocent vide SIT Report dated 26.05.2022 (Annexure P-2). It is next submitted that on the basis of the inquiry report, an entry GD No.036 dated 03.06.2022 (Annexure P-3) was entered regarding the innocence of the present petitioner and special report to this effect was prepared and sent to the Illaqa Magistrate.

4. Learned counsel for the petitioner submits that subsequently, an application was moved before the Duty Magistrate for release of the petitioner from custody as the Investigating Officer suffered a statement that the petitioner was found innocent during investigation; accordingly, the petitioner was released from custody vide order dated 22.06.2022 (Annexure P-4). It is stated that subsequently, the Station House Officer,

Police Station Sardulgarh, presented cancellation report by way of supplementary challan under Section 173(8) of the Cr.P.C on 03.06.2022 qua the present petitioner; however, the learned Magistrate disagreed with the same and summoned the petitioner under Section 190 of the Cr.P.C, vide order dated 08.09.2022 (Annexure P-5).

5. It is submitted by learned counsel for the petitioner that the stage of summoning by the learned Magistrate under Section 190 of the Cr.P.C., is similar to summoning under Section 319 of the Cr.P.C and similar parameters are to be considered while granting anticipatory bail. It is submitted that nothing is to be recovered from the petitioner as even as per the allegations in the FIR, only a *lalkara* has been attributed to him.

6. Learned counsel for the petitioner has referred to an order dated 20.10.2022, passed by a Co-ordinate Bench of this Court, which reads as under :-

“ The petitioner, who has been summoned with the aid of Section 190 Cr.P.C., seeks grant of anticipatory bail in respect of a case registered vide FIR No.89 dated 05.06.2021 at Police Station Sardulgarh, District Mansa, under Sections 302/323/34 IPC.

Notice of motion for 11.04.2023.

In the meantime, the petitioner is directed to appear before the learned trial Court within a period of one week from today. Upon his appearance within one week, the trial Court shall release the petitioner on interim bail.”

7. Learned counsel for the petitioner submits that pursuant to order dated 20.10.2022, the petitioner had appeared before the trial Court and has been admitted to bail and vide order dated 20.12.2022 passed by the Sub Divisional Judicial Magistrate, Sardulgarh, the case stands committed to the Court of Sessions, District Mansa. Accordingly, it is

prayed that the interim bail granted to the petitioner in this case vide order dated 20.10.2022, may be confirmed.

8. Notice of motion in the case was issued on 20.10.2022, whereupon, learned State counsel has appeared and handed over a copy of order dated 20.12.2022 passed by learned Sub Divisional Judicial Magistrate, Sardulgarh, which is taken on record, subject to all just exceptions and the same is marked as 'Mark A'.

9. Learned State counsel as well as the counsel for the complainant has opposed the plea of bail made by the petitioner; however, learned State counsel does not dispute the fact that in the FIR, only *lalkara* has been attributed to the petitioner and in pursuance of order dated 20.10.2022 passed by Co-ordinate Bench of this Court, the petitioner had appeared before the trial Court and has been admitted to interim bail and presently, the case stands committed to the Court of Sessions, District Mansa.

10. I have heard learned counsel for the parties and have perused the paper book with their able assistance.

11. The petitioner is an old man of around 70 years of age, who was declared innocent during investigation; however, he was subsequently summoned under Section 190 Cr.P.C. Even as per the allegations levelled in the FIR, only *lalkara* has been attributed to the petitioner and vide order dated 20.10.2022 passed by Co-ordinate Bench of this Court, the petitioner was ordered to be released on interim bail. It is not disputed that in pursuance of the interim bail granted by this Court, the petitioner has already appeared before the trial Court and joined the proceedings and presently, the case stands committed to the Court of Sessions, District

Mansa. Accordingly, order dated 20.10.2022 passed by this Court is made absolute.

12. It is made clear that if the petitioner fails to comply with any of the bail conditions laid down under Section 438(2) Cr.P.C, the State would be at liberty to move an application for cancellation of this anticipatory bail granted to the petitioner.

13. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for anticipatory bail at this stage.

14. The petition is accordingly disposed of.

April 28, 2023
Himani/gurpreet

(HARSH BUNGER)
JUDGE

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