

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

CRM-M-51214-2021 (O&M)

Date of decision: 29.08.2023

JAGSIR SINGH @ JAGGA

....Petitioner

Versus

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. A.P.S. Deol, Senior Advocate
with Mr. Vishal R. Lamba, Advocate
for the petitioner.

Mr. M.S. Tiwana, A.A.G., Punjab.

Mr. Nikhil Ghai, Advocate
and Mr. A.P.S. Pannu, Advocate
for the complainant.

HARSH BUNGER, J.

Petitioner (Jagsir Singh @ Jagga) has filed this petition under Section 439 of the Code of Criminal Procedure (for short 'the Cr.P.C.) for grant of regular bail in case FIR No.89 dated 05.06.2021, under Sections 302 and 323 read with Section 34 of the Indian Penal Code (for short 'the IPC'), registered at Police Station Sardulgarh, District Mansa (Annexure P-1).

2. Status report dated 11.04.2023 by way of an affidavit of Sh. Gobinder Singh, PPS, Deputy Superintendent of Police, Sub-Division Sardulgarh, District Mansa, on behalf of respondent/State of Punjab has been filed, which is already on record.

3. Custody certificate dated 31.05.2023 of the petitioner has been filed by learned State counsel, which has been taken on record vide order dated 01.06.2023.

4. Briefly, the afore-said FIR was registered on the complaint of one Harwinder Singh son of Gurcharan Singh, who stated that his elder brother was Jaswinder Singh (aged about 43 years), who used to do the agriculture work and their fields were situated beyond the drain of Kahnewala road and were having a common boundary with their paternal uncle (Taya-Karnail Singh). It is alleged that the complainant and his brother Jaswinder Singh, had told their uncle (Taya) Karnail Singh's son namely Jagsir Singh @ Jagga (petitioner) and Gurdit Singh @ Kala, to get the boundary of their field straightened but neither they were getting the demarcation done nor they were letting them to straighten the boundary; whereupon, the brother of the complainant namely, Jaswinder Singh had told Jagsir Singh @ Jagga (petitioner) and others that on the said day i.e. 05.06.2021, they have to straighten the boundary and asked them (Jagsir Singh and others) to come at the spot. It is alleged that on 05.06.2021, while the complainant and his brother Jaswinder Singh, were ploughing their fields with their tractor, which was situated beyond the drain in Sardulgarh, 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 in the field and Jagsir Singh @ Jagga (petitioner) was already present there. It is alleged that Gurdit Singh along with three persons came to their field and started abusing the complainant party; whereupon the complainant got down from the tractor and started talking to the aforesaid persons. It is alleged that Gurdit Singh @ Kala, gave 4-5 blows with a sharp *kirch* like thing to the brother of the complainant namely, Jaswinder Singh on the right/left side below his left nipple on the heart and in the middle of his mouth;

whereupon, he fell down. It is further alleged that Jagsir Singh @ Jagga, gave a fist blow on the nose of the complainant's brother and when the complainant came forward to save his brother, then Jagsir Singh @ Jagga (petitioner) gave a fist blow near the left eye of the complainant and also hit the complainant on the right side of his chest. Thereafter, it is alleged that he (Jagsir Singh @ Jagga) picked up the *tamba* lying there and gave a blow on the right arm of the complainant. Jarnail Singh @ Jaila, is alleged to be raising *lalkaras* standing there that they (complainant's side) should not escape unharmed and finish them. As per the complainant, when he raised hue and cry then Gurdit Singh @ Kala and others with their weapons ran towards their fields and in the meantime, their neighbour Gurpreet Singh son of Sukhdev Singh came there. It is stated that when the complainant and Gurpreet Singh, were taking his brother Jaswinder Singh on motor-cycle to Civil Hospital, Sardulgarh for treatment then his brother Jaswinder Singh expired on the way near Gaushala, Sardulgarh. Thereafter, his dead body was brought to the Civil Hospital, Sardulgarh. It is alleged that Gurdit Singh @ Kala, in connivance with each other have inflicted injuries to the complainant and his brother and killed the complainant's brother Jaswinder Singh. The cause of grudge is stated that they have a common boundary with Gurdit Singh @ Kala etc. which was not straight and the complainant side had asked them to straighten the boundary (vat) and due to the said grudge, the assailants had quarrelled with the complainant party and killed Jaswinder Singh and also inflicted injuries on the complainant.

5. As per the status report, after the registration of the afore-said case FIR, the inquest proceedings were carried out and post-mortem on the dead body of deceased-Jaswinder Singh was conducted.

Petitioner-Jagsir Singh @ Jagga was arrested on 14.06.2021 and Gurdit Singh @ Kala was arrested on 08.06.2021 and the weapons used by them in the occurrence for causing injuries on the person of deceased-Jaswinder Singh i.e. ice-pick (*barf walasua*) and wooden log (*tamba*) were got recovered by the accused persons, as per their disclosure statement recorded under Section 27 of the Evidence Act. As per the status report, upon completion of investigation, challan was submitted against two persons namely, Jagsir Singh @ Jagga (petitioner) and Gurdit Singh @ Kala.

6. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the present case on the complaint of one Harwinder Singh. It is submitted that the complainant's side and the petitioner are related to each other as they have common ancestor Lal Singh (grand-father). It is submitted that the origin of the fight is a petty issue with regard to straightening the common boundary between their fields, which led to the altercation resulting in injuries on the person of Jaswinder Singh by Gurdit Singh @ Kala. Learned counsel for the petitioner further submits that the petitioner was empty handed and has been falsely implicated by attributing fist blow on the nose of Jaswinder Singh, after the injuries were inflicted by his brother Gurdit Singh @ Kala. It is submitted that further allegation is that the petitioner had given fist blows to the complainant, hitting on his left eye, right arm along with his uncle Jarnail Singh, who has since been declared innocent. Learned counsel for the petitioner submits that the occurrence took place on the spur of the moment when Jaswinder Singh (since deceased) had insisted upon straightening of the boundary of their common field, without getting any demarcation done from the Revenue Authorities. It is next submitted that in these circumstances, Gurdit Singh

@ Kala, had every right to protect his property. Accordingly, it is submitted that it would be a debatable issue as to whether Section 302 of the IPC, is made out against Gurdit Singh @ Kala.

7. Learned counsel for the petitioner submits that from the perusal of the injuries, described in the post-mortem report ; injury No.2 is described as *incised wound of size 1x0.5 cm. on left angle of mouth*; resulting infiltration of blood. It is contended that the said injury attributed to the petitioner on the person of the deceased is belied from the nature of injury No.2, being the result of sharp pointed weapon. It is submitted that there is no corroboration to the allegation of causing fist blow on the face of Jaswinder Singh (since deceased). Learned counsel further contends that the other role ascribed to the petitioner is causing fist blow on the person of complainant (Harwinder Singh) for which, he was medico-legally examined and all the five injuries described in the MLR are pain and no contusion described with any injury. It is submitted that the possibility of fabricating these injuries for the purpose of becoming a witness, cannot be ruled out. It is next submitted that even injury No.3, which is described as pain on right chest and bite mark red (size approximately 3x5 cm.) present over right chest is fabricated by the complainant only to create some allegation against the petitioner and the injuries described in the MLR were declared as simple in nature. Accordingly, it is submitted that the role ascribed to the petitioner is doubtful and not corroborated from any medical evidence. Learned counsel for the petitioner further submits that the petitioner was arrested in this case on 14.06.2021 and no recovery of any weapon etc. has been made at his instance. Furthermore, the petitioner is not involved in any other criminal case. It is also submitted that the investigation in this case is

complete; challan stands presented and even the charges have been framed. Therefore, it is contended that the trial is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind the bars. It is stated that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court; accordingly prayer for grant of regular bail is made.

8. Per contra, learned State counsel opposed the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of offence. It is submitted that after the investigation in this case; challan stands presented against the petitioner and another co-accused namely, Gurdit Singh @ Kala and even charges have been framed against them. It is submitted that the case was committed as Sessions trial on 22.12.2022 and charges were re-framed on 22.12.2022 and out of total 29 prosecution witnesses, none of the prosecution witness was examined. It is submitted that in case, the petitioner is enlarged on regular bail then he may tamper with the evidence and influence the material witnesses or he may abscond and flee from justice which may delay the trial. He further submits that the petitioner has actively participated in the commission of the crime, which has led to the loss of one human life; accordingly, prayer for dismissal of the petition has been made.

9. I have heard learned counsel for the parties and perused the paper book, status report as well as custody certificate filed by learned State counsel.

10. As per the FIR, the complainant along with his brother Jaswinder Singh (since deceased) was present in the fields when the petitioner along with other co-accused is stated to have come there and the

altercation has taken place, allegedly on the issue of straightening of common boundary of the fields; whereupon, Gurdit Singh @ Kala and the petitioner-Jagsir Singh @ Jagga, are stated to have inflicted injuries upon Jaswinder Singh (deceased) and also the complainant. The petitioner is claiming that in fact, the occurrence took place on the spur of the moment when Jaswinder Singh (since deceased) had insisted upon straightening of the common boundary wall of the field, without getting the demarcation done from the Revenue authority. It is submitted that Gurdit Singh @ Kala, had every right to protect his property in exercise of the right as defined under Section 103 IPC (clause Fourthly). However, I am not convinced with the afore-said submissions made on behalf of the petitioner. The petitioner along with co-accused Gurdit Singh @ Kala, have been specifically named in the FIR and specific role has also been attributed to them. The petitioner has actively participated in the commission of crime. As regards the plea that the Gurdit Singh @ Kala had right to protect his property in exercise of his right under Section 103 IPC (clause Fourthly); suffice it to say that the said issue shall be considered by the trial Court, in the light of the evidence, to be led by the prosecution. The other submission of learned counsel for the petitioner that the injuries attributed to the petitioner in the FIR, are not substantiated with the medical evidence; it is observed that the FIR is not to be treated to be an encyclopaedia. In the nature of things, details had to be gathered by the investigation later. In this regard, reference can be made to the observations made by the Hon'ble Apex Court in *Superintendent of Police, C.B.I. v. Tapan Kr. Singh, 2003(2) RCR (Criminal) 880*; wherein it

was observed as under:

“20. It is well settled that a First Information Report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter

to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can...”

11. The petitioner is facing serious charge under Section 302 and 323 read with Section 34 IPC for the murder of brother of the complainant namely, Jaswinder Singh. Trial is going on and guilt of the accused shall be determined during the trial.

12. As regards the other plea for seeking regular bail that the petitioner has been in custody since 14.06.2021 and out of total 29 prosecution witnesses, none of the prosecution witness was examined; however, in my considered opinion, the petitioner cannot be released on bail solely on the basis of long incarceration in jail or on the ground that the trial is not likely to be concluded in near future; especially when the petitioner is being tried for a serious and heinous offence of murder of brother of the complainant. In **Kalyan Chandra Sarkar v. Rajesh Ranjan**

@ Pappu Yadav, 2004(2) RCR (Criminal) 254, Hon'ble Apex Court

held as under:

"The condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded, in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

13. As per the settled position of law, gravity and seriousness of the offence is a relevant consideration for the purpose of grant of bail. Further, the Hon'ble Apex Court in **Neeru Yadav vs State of Uttar Pradesh 2014(16) SCC 508**, observed as under :-

"A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering

in disorderly things which the society disapproves, the legal consequences are bound to follow. At this stage, the court has duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

14. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly.

15. Keeping in view the gravity and seriousness of offence and also the likelihood of petitioner tampering with the prosecution evidence and even absconding, no ground for grant of regular bail to the petitioner is made out. The present petition is accordingly dismissed.

16. Nothing stated here-in-above shall be construed as an 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 petition.

17. Pending application/s, if any, shall also stand disposed of.

August 29th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No