

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on: 04.01.2023

Pronounced on: 10.01.2023

1. CRM-M-47777-2019 (O&M)

Balbir Singh ... Petitioner

Versus

State of Punjab ... Respondent

2. CRM-M-10057-2020 (O&M)

Sukhraj Singh ... Petitioner

Versus

State of Punjab ... Respondent

3. CRM-M-53966-2021 (O&M)

Chamkaur Singh ... Petitioner

Versus

State of Punjab ... Respondent

4. CRM-M-52739-2021 (O&M)

Uday Singh ... Petitioner

Versus

State of Punjab ... Respondent

CORAM:-HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. P.S. Hundal, Senior Advocate with
Mr. Vikramjeet Singh, Advocate
for the petitioner (in CRM-M-47777-2019).

Mr. M.L. Saggar, Senior Advocate with
Ms. Shubhreet Saron and Mr. Armaan Saggar, Advocates
for the petitioners
(in CRM-M Nos. 53966 and 52739-2021).

Mr. Amit Arora, Advocate for the petitioner
(in CRM-M-10057-2020).

Mr. Jaspal Singh Guru, Assistant Advocate General, Punjab.

Mr. H.S. Randhawa, Advocate for the complainant.

ASHOK KUMAR VERMA, J.

1. This order will dispose of CRM-M-47777-2019, 10057-2020, 53966-2021 and 52739-2021 as the same arise out of a common FIR.

2. These petitions have been filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioners in case FIR No. 151 dated 12.10.2014 under Sections 302,148, 149, 120-B I.P.C. registered at Police Station Sarhali, District Tarn Taran (Punjab).

3. The case of the prosecution, in brief, is that one Salwinder Singh got recorded his statement before the Investigating Officer that he has one son and five daughters and paddy variety -1509 was brought by him. His son Gurjant Singh, his servant Swaran Singh and his brother-in-law's son- Satnam Singh son of Sukhdev Singh, their paddy was not auctioned and they put Tarpaulin on the heap of paddy and left their Farm House Behak and his son was driving his Motor Platina and his servant Swaran Singh was sitting on its pillion and he was sitting on the pillion of Satnam Singh and his brother-in-law's son. They started from Grain Market Sarhali to their Farm House on the *Pacca* road. His son and servant were ahead of them whereas he and Satnam Singh were following them and when they were 200 yards short of G.T. Road, at about 7.00 P.M., they saw in the light of the motorcycle that petitioner- **Balbir Singh** armed with rifle, Jarmanjeet Singh armed with *Kirpan*, Stalanjit Singh armed with *Datar*, petitoner **Uday Singh** armed with *Datar*, Gurdev Singh armed with *Datar*, Gurucharan Singh armed with *Datar*, petitoner-**Chamkaur Singh** armed with *Kirpan* and petitoner- **Sukhraj Singh** armed with *Datar* alongwith 7/8 persons armed with *Datars* and *Kirpans* standing on the road. On seeing his son on the

Motorcycle, petitioner-**Balbir Singh** raised *Lalkara* saying to catch him

and teach Gurjant Singh a lesson for picking up quarrel with them. On hearing *Lalkara*, Jarmanjeet Singh, Stalanjit Singh, petitioner- **Uday Singh**, Gurdev Singh, Gurcharan Singh, petitioner-**Chamkaur Singh**, petitioner-**Sukhraj Singh** and unidentified persons started causing injuries to his son indiscriminately. On seeing this, he alongwith his brother-in-law's son Satnam Singh stepped back out of fear and cried loudly "killed, killed" on which all the above assailants ran away towards *Harike* on the GT road via Canal minor Bridge Khara in a car and motorcycles which were parked near the GT road with their respective weapons. He alongwith his brother-in-law's son Satnam Singh stepped ahead and saw his servant Swaran Singh falling on the road and his son Gurjant Singh was lying fatally injured in the paddy fields near the metalled road. His son Gurjant Singh died on the spot. His employee Swaran Singh had also suffered extensive injuries upon his person and the motorcycle was also damaged. Then he called his brother-in-law Sukhdev Singh and son-in-law Dogar Singh son of Swaran Singh by giving telephonic call and also informed the police on phone about the incident. The accused were nursing a grudge against his son due to an earlier quarrel with them. The accused persons had killed his son in connivance with each other. On the basis of the above said statement, the aforesaid FIR was registered against the accused.

4. Mr. P.S.Hundal, learned senior counsel appearing on behalf of petitioner-Balbir Singh submits that the petitioner has been falsely implicated in the present case. During the course of the investigation, the petitioner alongwith other accused persons were earlier declared innocent in an inquiry conducted by IGP on the basis of polygraph test which was carried out at Delhi. Learned senior counsel submits that the only allegations against petitioner-Balbir Singh are that he was having a

rifle and raised a *lalkara*, meaning thereby that he did not touch the deceased even with his little finger what to say of firing with his firearm. Moreover, the petitioner was having licensed DBBL gun and in the FIR it has been mentioned “rifle”. There is no allegation that the petitioner had used his licensed gun. No specific injury has been attributed to the petitioner. Learned senior counsel further submits that co-accused, namely, Gurdev Singh, Stalinjit Singh and Gurcharan Singh were acquitted by the Additional Sessions Judge, vide its order dated 04.08.2018 on the ground that eye-witnesses, the complainant and his bother-in-law's son Satnam Singh had not supported the case of the prosecution and the judgment of acquittal has not been challenged by the complainant. Thus, the petitioner is facing *de novo* trial which is impermissible in the eyes of law. Learned senior counsel further submits that though the petitioner was earlier declared a proclaimed offender, but he surrendered before the trial Court on 24.10.2018 and is behind the bars since then. The trial is not likely to conclude in near future and as such no useful purpose would be served by keeping the petitioners behind the bars.

5. Mr.M.L.Saggar, learned Senior Counsel appearing for the petitioners-Chamkaur Singh and Uday Singh, while reiterating and laying emphasis on the aforesaid submissions, adds that the petitioners have been falsely implicated in the present case and no specific role and injury has been attributed to them. Although the petitioners were declared proclaimed offenders, but they surrendered before the trial court on 10.8.2018 and are in custody since then. Trial is not likely to conclude in near future and no useful purpose would be served by keeping the petitioners behind the bar. The petitioners cannot be kept behind bars indefinitely. In support of his contentions, learned Senior

Counsel has relied upon **Hussainara Khatoon and others v. Home Secretary, State of Bihar**, (1980) 1 SCC 81, **Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and others**, (1994) 6 SCC 731, **Hussain and another v. Union of India**, (2017) 5 SCC 702, **Satinder Jit Singh v. State of Punjab** (SLP (Crl.) No.2415 of 2006 decided on 8.1.2007), **Ashu v. State of Punjab** (CRM-M-8844 of 2021 decided on 16.11.2021), **Amarjit Singh alias Amba v. State of Punjab**, (CRM-M-4527-2022 decided on 9.5.2022), **Harmandeep Singh alias Lavi v. State of Punjab** (CRM-M-11637-2020 decided on 3.6.2020), **R.K.Aggarwal v. U.T, Chandigarh** (CRM-M-37990-2017 decided on 22.12.2017) and **Bachhittar Singh alias Satwinder Singh v. State of Punjab**, (CRM-M-2962-2021 decided on 19.2.2021).

6. Mr. Amit Arora, learned counsel for the petitioner-Sukhraj Singh, while reiterating the aforesaid submissions, adds that the petitioner has been falsely implicated in the present case. The petitioner has not been attributed any specific role or injury. *Mens rea* is missing in the present case. No offence under Section 302 of the IPC is made out against the petitioner. Although the petitioner was declared a proclaimed offender, but the petitioner surrendered before the trial court on 18.8.2018 and since then he is in custody. Trial is not likely to conclude in near future and as such no useful purpose would be served by keeping the petitioners behind the bars.

7. On the contrary, learned counsel for the State, assisted by learned counsel for the complainant vehemently opposed the grant of regular bail to the petitioners. Learned counsel submits that antecedents of the accused persons are not good. The accused- petitioner-Balbir Singh, petitioner-Chamkaur Singh, Jarmanjeet Singh, petitioner-Udhay

Singh, petitioner-Sukhraj Singh alias Kala son of Lakhwinder Singh were declared proclaimed offenders by the Judicial Magistrate 1st Class Tarn Taran on 19.1.2015. After conclusion of the trial, co-accused, namely, Stalinjit Singh, Gurdev Singh and Gurcharan Singh had been acquitted vide order dated 4.8.2018 passed by the Additional Sessions Judge, Tarn Taran. Accused Jarmanjit Singh, Chamkaur Singh, Udhay Singh were arrested in FIR No.143 dated 12.9.2014 under Sections 452, 324, 506, 148, 149 of the IPC registered at Police Station Harike on 8.8.2018 and thereafter, the arrest of co-accused, Jarmanjit Singh and petitioners- Chamkaur Singh and Udhay Singh has been made in the present case after obtaining production warrants from the court of Illaqa Magistrate, Tarn Taran on 10.8.2018. During the course of investigation, offence under Section 201 of the IPC i.e. for causing disappearance of evidence of offence or giving false information to screen the offender has been added. Thereafter petitioner, Sukhraj Singh has been arrested on 18.8.2018, petitioner-Balbir Singh has been arrested on 24.10.2018 and from petitioner- Balbir Singh, one rifle double barrel 12 bore and arms licence have been recovered. Learned counsel submits that specific roles have been attributed to the petitioners and all of them are hand in glove in committing brutal murder of the son of the complainant. Learned counsel submits that on the directions of this Court passed in the writ petition filed by complainant, Kunwar Vijay Pratap, the then Inspector General of Police, Punjab was directed to conduct re-investigation in the present case and after thorough re-investigation, supplementary report under Section 173(8) of the Cr.P.C. has been presented before the Illaqa Magistrate, Tarn Taran against accused-petitioners alongwith other accused and the same has been committed to the Court of Sessions Judge, Tarn Taran against 5 accused

persons, namely, Jarmanjit Singh, petitioner- Chamkaur Singh, petitioner- Udhay Singh, petitioner-Sukhraj Singh and petitioner-Balbir Singh. Learned counsel submits that charges have been framed against the petitioners and 2 prosecution witnesses have been examined.

8. Learned counsel for the complainant, while relying upon the aforesaid submissions, vehemently opposed the grant of bail to the petitioners by adding that the son of the complainant was brutally murdered at the hands of the petitioners alongwith other co-accused, one of whom, happens to be police officer and posted as Station House Officer in the same area, while others are the henchmen of a local MLA of the then Ruling party, namely, Mr. Harminder Singh Gill. Learned counsel submits that the accused are very influential persons and if they are granted bail, the life and liberty of the complainant and his family members alongwith the witnesses would be at stake as earlier the witnesses were made to turn hostile due to threat and pressure and the co-accused persons- Stalinjit Singh, Gurdev Singh and Gurcharan Singh had been acquitted, despite stay order dated 31.07.2018 passed by this Court. On interference by taking cognizance by this Court, re-investigation in the aforesaid FIR has been ordered vide a detailed order dated 6.12.2019 passed in CRM-27982-83-2019 IN/AND IOIN CRM-M-41639-2014 by a co-ordinate Bench of this Court.. Learned counsel for the complainant submits that the accused persons have already tried to win over the witnesses and have threatened the complainant and his family members which is apparent from the aforesaid detailed order dated 6.12.2019 passed by this Court. Learned counsel further submits that even on re-investigation in the FIR under Section 397 Cr.P.C. in compliance with the aforesaid directions of this Court contained in the aforesaid order dated 6.12.2019, the State re-investigated the matter and

all the eight accused persons were found guilty and the State filed a supplementary challan under Section 173 (8) of the Cr.P.C. against all the accused persons i.e. against the three co-accused persons who got acquittal in spite of stay granted by this Court and the present petitioners. In spite of aforesaid supplementary challan, acquitted persons were not summoned to face trial. The complainant filed application before the trial court to summon them, but the same was dismissed. The complainant has assailed the said dismissal order before this Court in CRM-M-17205-2021 in which notice of motion has been issued and proceedings before the trial court have been stayed. In these circumstances, if bail is granted to the petitioners, there is every likelihood that they can misuse the concession of bail. Merely because the petitioners have undergone certain period of incarceration and the trial is not likely to be concluded in near future, would not be grounds to enlarge the petitioners on bail. In support of his submissions, learned counsel for the complainant has relied on catena of judgments of the Hon'ble Supreme Court, some of which are: **Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav (SC)**, Law Finder Doc Id # 69139, **Sunil Kumar vs. The State of Bihar and another**, Law Finder Doc Id # 1936247, **Panchanan Mishra vs. Digambar Mishra (SC)**, Law Finder Doc Id # 81550, **Kumer Singh vs. State of Rajasthan and another (SC)**, Law Finder Doc Id # 1860338 etc.

9. I have given my thoughtful consideration to the submissions of the learned counsel for the parties and gone through the paper-books.

10. I do not find any merit in the submissions made by the learned counsel for the petitioners. As per prosecution story, in the year 2014 the complainant's son was murdered by the petitioners alongwith

other co-accused. FIR No.151, dated 12.10.2014 was registered under Sections 302, 148, 149 and 120-B IPC at Police Station Sarhali, District Tarn Taran against the petitioners alongwith other co-accused. The petitioners have been specifically named in the FIR. There are specific allegations and roles attributed to the petitioners. Petitioner-Balbir Singh armed with rifle whereas other petitioners armed with *Datar/Kirpan* are alleged to have attacked and murdered the son of the complainant. In the post mortem report of the deceased, the cause of death is “*due to multiple fractures because of injuries leading to excessive haemorrhage blood loss and shock which is sufficient to cause death in an ordinary course of nature.*”

11. As noticed above, under political patronage enjoyed by the aforesaid accused persons, the police did not conduct a fair investigation; the complainant approached this Court through CRM-M-41639-2014 seeking therein fair investigation which petition of his was disposed of on 22.09.2016 by directing I.G.Crime, Punjab to enquire in the matter; when even then no investigation took place, the complainant approached this Court; on 31.07.2018 this Court, after considering the status report filed by the State, issued several directions to the State to ensure free and fair investigation in the matter with further directions to stay the proceedings before the Trial Court; in spite of the above stay order, on 04.08.2018, the Trial Court acquitted co-accused, namely, Stalanjit Singh, Gurcharan Singh and Gurdev Singh; this Court noticed the aforesaid facts and since the same shocked its conscience, powers under Section 397 Cr.P.C. were invoked and through order dated 06.12.2019 this Court ordered re-investigation in the matter; the aforesaid directions were issued only after this Court had opined that the investigating agency had failed to perform its duties leading to the

acquittal of the aforesaid co-accused, in compliance with the directions issued by this Court, the State re-investigated the matter and filed a supplementary challan Section 173(8) Cr.P.C. as per which all the afore-referred co-accused who got acquittal and the present petitioners were found guilty; in spite of the aforesaid supplementary challan, the State refused to even summon the co-accused who were acquitted by the trial court inspite of stay order, to face trial; in these circumstances the complainant filed an application to summon the aforesaid co-accused to face trial which application of his was dismissed by the trial court. On dismissal of the application, the complainant approached this Court by filing CRM-M-17205-2021 in which notice has been issued and further proceedings have been stayed by vide order dated 11.10.2021 by a co-ordinate Bench of this Court.

12. As noticed above, on 19.1.2015, the petitioners were declared proclaimed offenders. On 10.7.2016, complainant and eye-witness Satnam Singh turned hostile due to pressure created by the accused which resulted into acquittal of the aforesaid co-accused- Stalanjit Singh, Gurdev Singh and Gurcharan Singh, despite stay order granted by this Court. All these have been noticed by a co-ordinate Bench of this Court in a detailed order dated 6.12.2019 passed in IOIN-CRM-M-41639-2014 wherein it has been observed as under:-

“In this case, the role of police including the SIT headed by Mr. Rao and the specific stand taken by Mr. G. Nageshwar Rao, IGP (Crime), Punjab before this Court on 18.12.2017 that the accused were not proclaimed offenders when they were seen in public view sharing dais with influential persons of the area including the local MLA, is a strong pointer that the accused being very well connected persons, have influenced the course of investigation leading to the acquittal of accused-respondent Nos.6, 8 and 9. The factum of staying the final judgment by the Court was also not

conveyed by the State counsel to the trial Court. The non-communication of the order passed by the Court whereby, passing of final judgment was ordered to be stayed before the trial Court led to acquittal of the accused. The order dated 31.07.2018 was passed in the open Court and uploaded on the official website on 07.08.2018. The judgment of acquittal was passed on 04.08.2018. This fact also generates suspicion. The family members of the victim were attacked and FIR in this connection was registered wherein no cognizance was taken. All these circumstances collectively convince the conscience of the Court that the police failed to perform its duties to protect the life and liberty of the victim's family which resulted in the acquittal of the accused. The Court feels that it is a fit case for reinvestigation. It is ordered accordingly. The reinvestigation be carried out by Kanwar Vijay Pratap, Inspector General of Police, Punjab. The SSP concerned is directed to hand over the entire record to Kanwar Vijay Pratap. The reinvestigation be completed and a report in this regard be furnished within five months from the date of receipt of a certified copy of this order .

Disposed of.”

13. Apart from that, antecedents of the petitioners are also not good. The accused persons had already won over the witnesses which resulted into acquittal of aforesaid co-accused. However, on interference by this Court, re-investigation has been done. Charges have already been framed against them. The accused persons were alleged to have attacked the family members of eye-witness Satnam Singh and in this regard FIR No.57 dated 21.5.2018 under Sections 452, 336, 427, 506, 148, 149 of the IPC had been registered at Police Station Sarhali, District Tarn Taran. Offence under Section 201 of the IPC i.e. for causing disappearance of evidence of offence or giving false information to screen the real offenders has also been added. One more FIR No.143 dated 12.9.2014 under Sections 452, 324, 506, 148 and 149

of the IPC has been registered against petitioners- Uday Singh and Chamkaur Singh. All these materials are sufficient to arrive at a conclusion that the petitioners do not deserve the concession of regular bail.

14. The judgments relied upon by the learned counsel for the petitioners are on different footings and are not applicable to the facts and circumstances of the present case. The judgments relied upon by the learned counsel for the complainant support the case of the complainant.

15. It has been observed by the Hon'ble Supreme Court in **Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P, (1978) 1 SCC 240** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

16. Merely because the petitioners are behind the bars for more than three years and trial is not likely to conclude in near future, are no ground for grant of regular bail to the petitioners. Hon'ble Supreme Court in **Kalya Chandra Sarkar (supra)** has considered this issue and observed as under:-

“13.....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 by itself would not entitle the accused to being 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.

X X X

X X X

X X X

16. Learned counsel for the appellant as also learned Additional Solicitor General have pointed out to us that there are allegations of threatening of the witnesses and that the prosecution has filed an application for the recall of witnesses already examined which has been allowed, but the same is pending in revision before the High Court. In such circumstances the High Court could not have merely taken the period of incarceration and the delay in concluding the trial as grounds sufficient to enlarge the respondent on bail.”

17. In the case of **Neeru Yadav vs. State of UP and another (SC), (2016) 15 SCC 422**, after referring to a catena of judgments rendered by the Supreme Court on the considerations to be placed at balance while deciding to grant bail, it has been observed by the Supreme Court as under:-

“15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history- sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large

and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.

X X X

X X X

X X X

18. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancing of the impugned order.”

18. The aforesaid enunciation of law has been reiterated by the Hon'ble Supreme Court in a recent judgment in **Sunil Kumar (supra)** wherein it has been observed as under:-

“9. Even otherwise the High Court has erred in not considering the material relevant to the determination of whether the accused was to be enlarged on bail. The High Court has not at all adverted to the relevant considerations for grant of bail. In the case of Anil Kumar Yadav (supra), it is observed and held by this Court that while granting bail, the relevant considerations are, (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering.

19. Applying the aforesaid law laid down by the Hon'ble Supreme Court to the glaring peculiar facts and circumstances of the present case; and more particularly, the material on record, gravity of the offence, prima facie involvement and complicity of the petitioners in brutal murder of the son of the complainant, their criminal antecedents, likelihood of again threatening, winning over the witnesses, tampering again with the evidence, apprehension of justice being thwarted by grant of bail to the petitioners because of unholy political nexus having the highest echelons of power and keeping in view the all-

out efforts made by a co-ordinate Bench of this Court from time to time resulting into passing a detailed order dated 6.12.2019 in IOIN CRM-M-41639-2014 showing a ray of light even in a dark tunnel, I am of the considered view that I do not find any trigger point warranting interference by this Court to grant concession of regular bail to the petitioners.

20. In view of the above, these petitions are dismissed. Misc. application(s) if any, pending in these matters shall stand disposed of accordingly. Nothing said here-in-above shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

10.01.2023
MFK

Whether speaking/reasoned Yes

Whether Reportable Yes