



201
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-151-2023(O&M)
Date of decision: 16.07.2024

(I)
Jasvir Singh and another

...Petitioners

VERSUS

State of Punjab

...Respondents

CRM-M-3378-2023 (O&M)

(II)
Jasvir Singh and another

...Petitioners

VERSUS

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. K.B. Raheja, Advocate, for the petitioners.
Mr. Adeshwar Singh Pannu, AAG, Punjab.
Mr. S.P.S. Sidhu, Advocate, for the complainant.

JASGURPREET SINGH PURI, J.

1. Both the petitions are taken up together for final disposal with the consent of learned counsel for the parties being inter-connected and arising out of the same FIR.



2. On 31.07.2023, CRM-M-3378-2023 was directed to be heard alongwith Criminal Revision No.151 of 2023 and therefore, they are being heard and disposed of together by way of a common order.

3. Criminal Revision No.151 of 2023 has been filed challenging the impugned order dated 09.12.2022 passed by the learned Sessions Judge, Faridkot, whereby the petitioners have been summoned under Section 319 Cr.P.C to face trial for offence punishable under Sections 302, 307 read with Section 34 IPC and Section 27 of Arms Act in FIR No. 76 dated 01.06.2021, registered at Police Station Sadar Kotkapura.

4. CRM-M-3378-2023 has been filed by the same petitioners under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioners in the aforesaid FIR.

5. The facts are being taken from Criminal Revision No.151 of 2023.

6. FIR No. 76 dated 01.06.2021 was lodged on the basis of statement of Sukhwinder Kaur @ Guddi wife of Nirmal Singh @ Chamba son of Gurnam Singh, resident of Dhilwan Kalan, Police Station Sadar, Kotkapura by stating that she is married to Nirmal Singh who is having dispute with his brothers Karam Singh, Jaswinder Singh (Petitioner), Jasvir Singh (Petitioner) and his father Gurnam Singh regarding partition of land/property and they collectively forcefully restrained them from irrigating their fields from water channel. On 31.05.2021 at about 5.00 P.M, she alongwith her husband Nirmal Singh and her son Harjot Singh arrived at their field for irrigating the land as per their turn. Then Karam Singh who was armed with .32 bore revolver, Jasvir Singh (Petitioner) armed with .12 double barrel gun and Jaswinder Singh (Petitioner) who was riding on a scooter and her father-in-law Gurnam Singh arrived at the



spot on a cycle. Thereafter, Karam Singh fired on them with his revolver which hit near the left ear of her husband and then the second time he was hit on his right shoulder and he collapsed on the ground. Thereafter, he again fired three shots from his revolver at them which hit the chest of her son Harjot Singh. Some more cartridges were taken by him from Jaswinder Singh (Petitioner) and he again loaded his revolver and fired on her son which hit on neck and left hand of her son and he also collapsed on the ground and thereafter, they fled away. The husband of the complainant namely, Nirmal Singh died on the spot, whereas her son Harjot Singh was injured due to gun shots and her son from his mobile called one of their relative namely, Atma Singh Dhillon son of Ajmer Singh Dhillon who arrived alongwith his son namely, Gurmukh Singh. Her son Harjot Singh was taken to the hospital thereafter. Translated version of the aforesaid FIR as has been attached with the petition as Annexure P-1 is reproduced as under:-

"Statement of Sukhwinder Kaur @ Guddi wife of Nirmal Singh @ Chamba son of Gurnam Singh, resident of Village Dhillwan Kalan, Police Station Sadar, Kotkapura, aged about 52 years. Stated that I am residing at above noted address. I am a housewife. My marriage took place about 30/32 years back with said Nirmal Singh @ Chamba. I have got three daughters & one son Harjot Singh. My two daughters are married, while one daughter & son are still unmarried. My husband Nirmal Singh was having dispute with his brothers Karam Singh, Jaswinder Singh, Jasvir Singh & his father Gurnam Singh regarding partition of landed property, as my deor & father in law collectively restrain us from irrigating our fields from water channel and try to divert the irrigation water to their water channel out of the turn in forcible manner. Today, at about 5.00 P.M., when I alongwith my husband Nirmal Singh & my son Harjot Singh arrived at our field in order to irrigate the land as per our turn, which comes



after Karam Singh and Jasvinder Singh, Jasvir Singh have turn after ours. I, my husband Nirmal Singh & my son Harjot Singh were diverting the water for our field, so that we may not have any problem in getting irrigation water, when my deors came from village Dhilwan side. Karam Singh was armed with .32 bore revolver, while Jasvir Singh armed with .12 bore double barrel gun & Jaswinder Singh was riding the said scooter, while my father in law Gurnam Singh arrived at the spot on a cycle. My father in law Gurnam Singh raised lalkara that Nirmal Singh & his family members may be taught a lesson for getting irrigation water before the scheduled time. On this, my deor Karam Singh fired on us with his revolver, which first fire hit near left ear of my husband Nirmal Singh and second one behind his right shoulder, on which, my husband collapsed in our field. My son Harjot Singh came forward to save his father, when Karam Singh fired three shots on us from his revolver, with a motive to kill us, which hit in chest of my son Harjot Singh. My deor Karam Singh fired all cartridges lying in his revolver and put the used cartridges in his pocket. Thereafter, he obtaining some more cartridges from Jaswinder Singh, loaded his revolver and fired on my son, which hit on neck & left hand of my son, resulting which, he collapsed on ground. I raised alarm, in which, said Karam Singh etc. fled away from the spot on their vehicles. My husband died at the spot, while my son, who was injured due to having received gun shots, gave a phone call from his Mobile to Atma Singh Dhillon son of Ajmer Singh Dhillon, resident of Village Dhilwan Kalan. On this, Atma Singh Dhillon & his son Gurmukh Singh arrived at the spot. We left Gurmukh Singh at the spot to protect the dead body of Nirmal Singh and then I alongwith Atma Singh Dhillon arranged conveyance and brought my son Harjot Singh to Civil Hospital, Kotkapura, who further referred him to Guru Gobind Singh Medical College, Faridkot. First aid was provided to my son at Guru Gobind Singh Medical College, Faridkot and then he was further referred. Reason of grudge is that my deor & father in law use to get the irrigation water to their water channel out of the turn in forcible manner and restrain us from irrigating the fields. Due to this grudge, the said



persons, in connivance with each other, have fired on us, which resulted in death of my husband and also injured my son with gun shots. You have recorded my statement, read over & explained its contents, heard, which is correct. Due legal action may be taken in the matter. Sd/-Sukhwinder Kaur @ Guddi. Attested - Sd/- Insp. Jagbir Singh 01/FR, S.H.O., Police Station Sadar, Kotkapura.

7. Thereafter, investigation was conducted by the police and during investigation wives of both the petitioners gave an application to the police that their husbands are innocent and they were not present on the spot when the occurrence had taken place and on the basis of which the Superintendent of Police, Faridkot conducted an inquiry which has also been attached alongwith the present petition as Annexure P-2 wherein the Superintendent of Police came to the conclusion that on the basis of the statements of the villagers, inspection of CCTV footage and reports of the mobile calls, it has been found that both the present petitioners namely, Jaswinder Singh and Jasvir Singh were not present at the spot at the time of occurrence and therefore, they are liable to be declared innocent. The conclusion report of the Superintendent of Police is reproduced as under:-

“Conclusion Report:

The application filed by Bir Pal Kaur wife of Jasvir Singh, resident of village Matta, Tehsil Jaitu, District Faridkot & Ranjit Kaur wife of Jaswinder Singh, resident of Village Dhilwan Kalan, Tehsil & District Faridkot, statements of applicants, so produced photo copy of bills for A.C., statement of Balwinder Singh son of Deep Chand son of Kalu Ram, resident of village Hari Nau, Tehsil Kotkapura, District Faridkot, Gursewak Singh son of Chhota Singh son of Nihal Singh, resident of village Matta, Tehsil Kotkapura, District Faridkot, Gurdit Singh son of Sukhdev Singh son of Ranjit Singh, resident of village Matta, Tehsil Kotkapura, District Faridkot, Jaswinder Singh son of



Karnail Singh son of Sham Singh, resident of Kothey Mahal Wale, Village Dhilwan Kalan, Tehsil Kotkapura, Jasvir Singh son of Makhan Singh son of Daan Singh, resident of Kothey Darjian Wale, Village Dhilwan Kalan, Tehsil Kotkapura, joint statement of Balwant Singh, Panch, son of Nachhattar Singh, Dilbag Singh, Panch, son of Joginder Singh, Malwinder Singh, Panch, son of Balkaran Singh & Malkit Kaur, Sarpanch, wife of Binder Singh, residents of village Matta, Tehsil Jaitu, District Faridkot, joint statement of Kulwant Singh, Nambardar, son of Dara Singh, resident of village Dhilwan Kalan, Tehsil Kotkapura, Makhan Singh, Ex. Panch, son of Ajmer Singh, resident of Guru Tegh Bahadur Nagar, Village Dhilwan Kalan, Tehsil Kotkapura, District Faridkot, statement of Sukhwinder Kaur @ Guddi wife of Nirmal Singh, resident of Village Dhilwan Kalan, complainant of case & affidavit produced by Ranjit Singh @ Goli son of Beant Singh, resident of Village Dhilwan Kalan, Tehsil Kotkapura, District Faridkot in his statement, perusal of case file belonging to F.I.R. No. 76 dated 1.10.2021 U/s. 302, 307, 34 IPC, 27, Arms Act - Police Station Sadar, Kotkapura, Call detail report belonging to Mobile No.98889 65759 of Jaswinder Singh and Mobile No.98150 50658 of Jasvir Singh, for 31.5.2021, CCTV Camera recording of Hamara Petrol Pump, Village hari Nau for 31.5.2021 at 5.00 P.M & video, prepared with Mobile and spot examination, that Jaswinder Singh, Jasvir Singh & Karam Singh are leasing out their land since past three years and this year also, they have leased out their land in favour of Ranjit Singh @ Goli son of Beant Singh, resident of Village Dhilwan Kalan. At the time of said occurrence, which took place on 31.5.2021 at about 5.00 P.M, said Jaswinder Singh son of Gurnam Singh, resident of village Dhilwan Kalan is found in his house & shops, situated near his house from noon hours till about 6.00 P.M and Jasvir Singh son of Gurnam Singh, resident of village Dhilwan Kalan, presently residing at village Matta, his maternal grandparents' village since past about 17-18 years, found having gone with Gursewak singh, Electrician, resident of village Matta to Kotkapura, where he purchased a 1.5 Ton A.C make Mitsubishi from National Enterprises, Rama Bazar, Kotkapura, District Faridkot vide



Bill No.362 dated 31.5.2021, then he arrived at Hamara H.P. Petrol Pump, Village Hari Nau at about 05:00 P.M and then at about 6.30 P.M, he is found present at village Matta. As regard presence of Jasvir Siongh with .12 bore gun, as got recorded by said Sukhwinder Kaur @ Guddi wife of Nirmal Singh, resident of Village Dhilwan Kalan, complainant of case in her statement, no fire is found having made by him. Then on 25.6.2021, Harjot Singh, son of the complainant, got recorded in his statement that Jasvir Singh made fires with his .12 bore gun with a motive of elimination. However no used cartridge found at the spot.

It reveals from open as well as secret enquiry so far conducted by me and the evidence brought on case file that both Jasvir Singh son of Gurnam Singh son of Ajmer Singh, resident of Village Dhilwan Kalan, presently residing at Village Matta and Jaswinder Singh son of Gurnam Singh son of Ajmer Singh, resident of Village Dhilwan Kalan, are not found having present at the spot at the time of said occurrence, hence they are liable to be declared innocent in the instant case. If it is approved, a direction may be issued to the S.H.O, Police Station Sadar, Kotkapura for declaring said Jasvir Singh son of Gurnam Singh son of Ajmer Singh, resident of Village Dhilwan Kalan, presently residing at Village Matta and Jaswinder Singh son of Gurnam Singh son of Ajmer Singh, resident of Village Dhilwan Kalan, to be innocent in the instant case.

Encl: Pen Drive.

*Sd/-
Superintendent of Police, P.B.I,
Faridkot
29/7/2021”*

8. Both the petitioners namely, Jaswinder Singh and Jasvir Singh were therefore put in column No.2 and were not challaned by the police. Thereafter, the trial commenced and the complainant who is wife of the deceased stepped into the witness box as PW-1 and while deposing in



examination-in-chief, the complainant reiterated the contents which were so recorded in the FIR with an improvement that the petitioner Jasvir Singh fired from his double barrel gun towards them with intention to kill but the shot did not hit them. On the basis of the aforesaid statement made by PW-1 complainant Sukhwinder Kaur, an application was moved by the prosecution under Section 319 Cr.P.C before the learned Sessions Judge for summoning both the present petitioners as additional accused since they have not only specifically been named in the FIR but a role is also attributable to them in the deposition of the complainant in the examination-in-chief. The learned Sessions Judge allowed the application under Section 319 Cr.P.C and summoned the present petitioners as additional accused under Section 319 Cr.P.C vide order dated 07.06.2022. The aforesaid order passed by the learned Sessions Judge has also been attached as Annexure P-10 with the present petition. Both the present petitioners assailed the aforesaid order passed by the learned Sessions Judge by filing Criminal Revision No. 1418 of 2022 before this Court and this Court vide Annexure P-11 dated 12.07.2022 allowed the revision petition and after setting aside the order passed by the learned Sessions Judge under Section 319 Cr.P.C remanded the case back to the learned Sessions Judge for passing a fresh order after applying the ratio laid down by the Constitutional Bench of Hon'ble Supreme Court in ***Hardeep Singh Versus State of Punjab and others, 2014(3) SCC 92***. Since the learned Sessions Judge did not record more than *prima facie* satisfaction on the basis of the evidence available on record, the aforesaid order was set aside. Even the learned State counsel and counsel for the complainant also recorded their no objection that in case the matter is remanded back to the learned Sessions Judge, Faridkot, then a



fresh decision can be taken in accordance with law by applying the principle laid down by the Hon'ble Supreme Court in *Hardeep Singh's case (Supra)*.

9. The learned Sessions Judge thereafter again passed the present impugned order on 09.12.2022 whereby again both the petitioners have been summoned as additional accused. In this way, the Criminal Revision No.151 of 2023 has been filed for quashing of the impugned order dated 09.12.2022 and CRM-M-3378-2023 has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioners.

10. Learned counsel appearing on behalf of the petitioners has submitted that the learned Sessions Judge while allowing the application under Section 319 Cr.P.C has erred in law and facts of the case because when the investigation was being carried out by the police, then a detailed inquiry was conducted by the Superintendent of Police vide Annexure P-2 where it has been specifically concluded by the Superintendent of Police that the petitioners were not present on the spot and therefore, the aforesaid factum of *alibi* has not been considered by the learned Sessions Judge while deciding the application under Section 319 Cr.P.C. He while referring to the aforesaid inquiry report submitted that the Superintendent of Police while inquiring the case recorded the statements of the villagers and many other persons who stated before the police that the petitioners were not present on the spot. He submitted that it has come in the inquiry that the petitioner Jasvir Singh is residing at village Matta, Tehsil Kotkapura, District Faridkot since past 17-18 years which is the village of maternal grand-parents of Jasvir Singh and he is practicing there as a doctor and they have a separate agricultural land from that of the deceased Nirmal Singh for about last 15 years and their land has been leased out to one Ranjit



Singh @ Goli since about past three years. It was so stated by the wife of the petitioner Jasvir Singh that on 31.05.2021 her husband left home at 11.45 A.M saying that he is going to Kotkapura for bringing AC and took one Gursewak Singh, Electrician alongwith him and they purchased one AC from Kotkapura vide bill No.362 dated 31.05.2021 and he came back home at 5.15 P.M and therefore, he has got no connection with the present offence. Similarly, the wife of petitioner Jaswinder Singh has stated that earlier her in-laws' family were residing together but eventually they separated about 20 years back and they shifted on the other side of the road and the deceased Nirmal Singh was having separate agricultural land for last 15 years and their land is also leased out to one Ranjit Singh @ Goli since past three years. She also stated to the police that on 31.05.2021 at about 5:00 P.M. her husband Jaswinder Singh was present at the gate outside the house and was gossiping with shopkeepers because her husband often used to gossip with the shopkeepers till 6:30 P.M and therefore, he has no connection with the aforesaid FIR. He also submitted that it has come in the inquiry report of the Superintendent of Police that the petitioner Jasvir Singh came to one petrol pump namely, Hamara Petrol Pump at Village Hari Nau at about 5:00 P.M alongwith one Gursewak Singh, Electrician for getting the fuel tank of his Aactiva filled and got the petrol filled regarding which even screen shot of the CCTV camera was given to the police. The statement of the aforesaid Gursewak Singh was also recorded by the police who stated that he remained with Jasvir Singh till 5:30 P.M on that date. Similar statements of some of the villagers were also recorded who also stated that the petitioners were innocent. Learned counsel submitted that even as per the mobile location, petitioner Jasvir Singh at 5:00 P.M was present at Hamara



Petrol Pump, Village Hari Nau and thereafter he was found at village Matta till 6.00 P.M. He submitted that on the basis of the aforesaid evidence collected during the investigation by the Superintendent of Police, the petitioners were not found at the spot of occurrence during the time of occurrence and therefore, were rightly exonerated by the police.

11. Learned counsel for the petitioners further submitted that the learned Sessions Judge has not considered all the material available on record and merely on the basis of the statements of complainant, son of the complainant and one other prosecution witness summoned the petitioners under Section 319 Cr.P.C. He referred to a judgment of Hon'ble Supreme Court in ***Brijendra Singh and others Versus State of Rajasthan, 2017(7) SCC 706*** to contend that when on the basis of investigation by the police it has been gathered that the person sought to be summoned as an additional accused was not even present on the spot, then while applying the ratio of judgment of Constitution Bench of Hon'ble Supreme Court in ***Hardeep Singh's case (Supra)***, it cannot be said that more than *prima facie* case is made out and therefore the impugned order is liable to be set aside.

12. On the other hand, learned Assistant Advocate General, Punjab on instructions submitted that it is a case where both the petitioners have been summoned as additional accused on basis of more than *prima face* case regarding which satisfaction has been recorded by the learned Sessions Judge while passing the impugned order based upon the witnesses who have deposed before the Court at the time of trial.

13. Learned counsel appearing on behalf of the complainant submitted that after the earlier order of summoning was set aside by this Court and the



case was remanded back to the learned Sessions Judge, a fresh order has been passed strictly in accordance with the parameters laid down by the Constitutional Bench of Hon'ble Supreme Court in ***Hardeep Singh's case (Supra)***. He submitted that initially the order was passed by the learned Sessions Judge under Section 319 Cr.P.C based upon the statement made by the complainant in examination-in-chief. Thereafter when the case was remanded back to the learned Sessions Judge for passing a fresh order in view of the judgment of Hon'ble Supreme Court in ***Hardeep Singh's case (Supra)***, then in the meantime two more witnesses were also examined by the prosecution. One witness was Harjot Singh who is the son of the complainant and who was also injured by fire shots at the place of occurrence which is clear from the FIR itself. He suffered very serious injuries of gun shots. The aforesaid Harjot Singh was examined as PW-2 and he also supported the prosecution version and deposed in detail with regard to the incident which had occurred. Thereafter one more witness namely, Atma Singh was examined as PW-3. He also deposed before the Court and recorded his statement in detail with regard to the aforesaid incident. On the basis of the examination-in-chief of both the aforesaid prosecution witnesses and that of the statement of complainant PW-1, the learned Sessions Judge passed the impugned order by summoning the petitioners as additional accused. He submitted that there is no discrepancy or contradiction between the statements of the aforesaid witnesses except when the complainant deposed before the Court she had reiterated the contents of the FIR but with a slight improvement by deposing that the petitioner Jasvir Singh had also fired a shot from .12 bore gun which did not hit anybody. He submitted that it was held by Hon'ble Supreme Court in ***Hardeep Singh's case***



(*Supra*) that the Court while considering the application under Section 319 Cr.P.C is to see evidence which came before the Court at the time of trial or inquiry. He submitted that the investigation which was done by the police itself was based upon the plea of *alibi* and could not have become a ground for dismissing the application under Section 319 Cr.P.C because the testimony of the three prosecution witnesses at the time of trial was sufficient enough for the learned Sessions Judge to make more than *prima facie* opinion to have summoned the petitioners as additional accused. He also submitted that the incident had occurred at about 5.00 P.M on 31.05.2021 and FIR was lodged without any delay on 01.06.2021 at 00:32 hours and therefore, there could have been no manipulation by the complainant during that short period of time and she narrated the incident to the police which has been so recorded in the FIR. He further submitted that although the complainant did not state in the complaint that the petitioner Jasvir Singh had also fired a shot from .12 bore gun but the FIR itself is not an encyclopedia and at the time of deposition, the complainant has specifically stated that the petitioner Jasvir Singh had also fired but did not hit anybody. He submitted that in view of the aforesaid facts and circumstances, the present petitions may be dismissed.

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

15. The learned Sessions Judge while considering the application under Section 319 Cr.P.C for summoning the present petitioners as additional accused considered and referred to the statement made by the complainant namely, Sukhwinder Kaur @ Guddi as PW-1 and also statement of her son namely, Harjot Singh as PW-2 and statement of Atma Singh as PW-3 while deposing before the Court. PW-1 Sukhwinder Kaur @ Guddi is the wife of the



deceased who was present on the spot, as per the FIR. PW-2 is Harjot Singh who is the son of the complainant and the deceased who also received serious injuries from gun shot. PW-3 Atma Singh who is the relative of the aforesaid PW-1 and PW-2 who was called after the incident had taken place and who came alongwith his son and thereafter took PW-2 Harjot Singh to the hospital. The FIR has been lodged well in time and there does not seem to be any delay in the same. The learned Sessions Judge has given description of the statements made by the aforesaid witnesses in the impugned order. There does not seem to be any material discrepancy between the aforesaid statements of the three prosecution witnesses nor does it seem to be in contradiction of the contents of the FIR. However, so far as the allegations with regard to firing by the petitioner Jasvir Singh from his double barrel .12 gun is concerned, the same came from the complainant at the time when she deposed before the Court and not in the FIR. During the course of arguments, it has been so stated by the learned counsel for the parties that the aforesaid .12 bore gun is licenced weapon belonging to petitioner Jasvir Singh. However, the aforesaid .12 bore gun was never surrendered before the police for further investigation.

16. Hon'ble Supreme Court in *Hardeep Singh's case (Supra)* while laying down the law pertaining to the scope of Section 319 Cr.P.C observed that apart from evidence recorded during trial, any material that has been received by the Court after cognizance is taken and before the trial commences can be utilised only for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. The 'evidence' is thus limited to the evidence recorded during trial. Regarding degree of satisfaction required for invoking Section 319 Cr.P.C, it was held that though only a *prima*



facie case is to be established from the evidence led before the Court not necessarily tested on the anvil of cross-examination it requires stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence, if goes un rebutted would lead to conviction. The relevant paragraphs of the aforesaid judgments are reproduced as under:-

xxxx-xxxx-xxxx

“80. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under [Section 319](#) Cr.P.C. The ‘evidence’ is thus, limited to the evidence recorded during trial.

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99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319](#) Cr.P.C. In [Section 319](#) Cr.P.C. the purpose of providing if ‘it appears from the evidence that any person not being the accused has committed any offence’ is clear from the words “for which such person could be tried together with the accused.” The words used are not ‘for which such person could be convicted’. There is, therefore, no scope for



the Court acting under [Section 319](#) Cr.P.C. to form any opinion as to the guilt of the accused.

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110. We accordingly sum up our conclusions as follows:

Question Nos.1 & III

Q.1 What is the stage at which power under [Section 319](#) Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in [Section 319\(1\)](#) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In [Dharam Pal's](#) case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under [Section 193](#) Cr.P.C. and the Sessions Judge need not wait till 'evidence' under [Section 319](#) Cr.P.C. becomes available for summoning an additional accused.? [Section 319](#) Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under [Sections 200, 201, 202](#) Cr.P.C.; and under [Section 398](#) Cr.P.C. are species of the inquiry contemplated by [Section 319](#) Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under [Section 319](#) Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in [Section 319](#) Cr.P.C. has to be



broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II

Q.II Whether the word "evidence" used in [Section 319\(1\)](#) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under [Section 319](#) Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under [Section 319\(4\)](#) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q.IV What is the nature of the satisfaction required to invoke the power under [Section 319](#) Cr.P.C. to arraign an accused? Whether the power under [Section 319 \(1\)](#) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under [Section 319\(4\)\(b\)](#) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under [Section 319](#) Cr.P.C. would be the same as for ? framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned



accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No.V

Q.V Does the power under [Section 319](#) Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charges-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under [Section 319](#) Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of [Sections 300](#) and [398](#) Cr.P.C. has to be complied with before he can be summoned afresh.

The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.

17. An argument was raised by the learned counsel for the petitioners that the Superintendent of Police while conducting the inquiry has exonerated the petitioners on the basis of *alibi* and it was concluded by the Superintendent of Police that they were not present on the spot based on statements of the villagers, the wives of the petitioners, CCTV footage and mobile tower location. During the course of arguments, a query was raised to the learned State counsel as to what is the distance between the petrol pump where the CCTV footage coverage has been considered by the Superintendent of Police and the place of occurrence to which he submitted on instructions from the officer present in the Court that it is only 7-8 kms. The land where the



occurrence has taken place belongs to all the brothers. However, the wives of the present petitioners have stated before the Superintendent of Police that the land was given on lease to another person. On the other hand, there are statements of three prosecution witnesses before the Court while deposing before the Court in examination-in-chief whereby direct roles have been attributed to both the petitioners. So far as the petitioner Jasvir Singh is concerned, role attributable to him is that he also came on the spot alongwith .12 double barrel gun and as per PW1 Sukhwinder Kaur, he fired from that. So far as the petitioner Jaswinder Singh is concerned, he came on scooter and as per FIR, he helped co-accused Karam Singh by providing him more cartridges and after loading the revolver again, Karam Singh again fired on Harjot Singh which hit his neck and left hand and thereafter, he collapsed on the ground.

18. The learned Sessions Judge while considering the application under Section 319 Cr.P.C discussed in detail the aforesaid material available before the Court and came to the conclusion that on the basis of evidence brought on record more than *prima face* case is made out against both the petitioners. The operative part of the impugned order is reproduced as under:-

“13. Thus, prosecution has proved on record sufficient evidence that accused Jasveer Singh was also present on the spot and allegedly fired from his double barrel gun towards PW1 Sukhwinder Kaur @ Guddi complainant and others, with intention to kill them, but the shots did not hit them, whereas, accused Jaswinder Singh ferried them to the spot having live cartridges which were taken by accused Karam Singh for the purpose of reloading his revolver. The evidence brought on record is more than a prima facie case against Jaswinder Singh and Jasveer Singh and leads to the only conclusion that they were accompanying accused Karam Singh, when accused Karam Singh committed murder of his brother Nirmal Singh and injured



PW2 Harjot Singh, and accused Jasveer Singh also fired from his 12 bore double barrel gun.

14. Accordingly, application moved by prosecution under Section 319 Cr.P.C. is allowed and accused Jaswinder Singh is ordered to be summoned for commission of offence punishable under Section 302 read with Section 34 IPC, 307 read with Section 34 IPC and Section 25 of Arms Act and accused Jasveer Singh is ordered to be summoned for commission of offence punishable under Section 307 IPC, 307 read with Section 34 IPC, 302 read with Section 34 IPC and Section 25 of Arms Act.

15. Any observation while deciding this application shall have no bearing on the merits of the case and shall not construed as expression of opinion on the merits of the case.”

19. Learned counsel for the petitioners also referred to a judgment of Hon'ble Supreme Court in ***Brijendra Singh's case (Supra)*** to contend that when a plea of *alibi* has been established during investigation by the police, then the petitioners could not have been summoned as additional accused. In the aforesaid judgment the plea of *alibi* was based upon the point that the appellants of that case were present at a place which was at a distance of 175 kms from the place of occurrence at the time the present offence took place. As per the aforesaid judgment, the learned Sessions Judge was required to consider the aforesaid material collected during investigation. However, in the present case, so far as the petitioner Jasvir Singh is concerned, in the investigation it was found that he has a separate agricultural land from that of the deceased Nirmal Singh but he had leased out the land to one Ranjit Singh @ Goli since last three years and also it was so stated by his wife that on 31.05.2021, Jasvir Singh left home at 11.45 A.M by saying that he is going to Kotkapura for



purchasing AC and the same was purchased by him and he came back home at 5.15 P.M and therefore, as per the investigation, he has got no connection with the present offence. In the investigation, the Superintendent of Police also referred to a fact that the aforesaid Jasvir Singh alongwith one Gursewak Singh, Electrician went to one petrol pump namely, Hamara Petrol Pump at Village Hari Nau at about 5:00 P.M for getting the fuel tank of his Activa filled and got the petrol filled and in this regard there is a screen shot of CCTV footage to show that the petitioner Jasvir Singh was at petrol pump at 5.00 P.M and the offence also occurred at the same time. It further came in the investigation that as per the mobile location, petitioner Jasvir Singh was at the aforesaid place till 6.00 P.M. However, during the course of arguments, learned State counsel has stated on instructions from the officer present in the Court that the aforesaid petrol pump is only 7-8 kms. from the place of occurrence. So far as the petitioner Jaswinder Singh is concerned, according to the statement given by his wife during investigation, she also stated that they are living separately from deceased Nirmal Singh and the land was leased out to the same person namely, Ranjit Singh @ Goli since past three years and on 31.05.2021 at about 5:00 P.M., Jaswinder Singh was present at the gate outside the house and was gossiping with shopkeepers till 6:30 P.M. The house is in the same vicinity where the occurrence took place. Therefore even as per report of the Superintendent of Police, both the petitioners were not at extremely far place so as to arrive at a conclusion that it was impossible for them to have reached the place of occurrence.

20. The learned trial Court has allowed the application under Section 319 Cr.P.C for summoning the present petitioners as additional accused on the basis of the statements made by the complainant who is the wife of the deceased, son of the deceased and another witness who was called on the spot after the incident.



These statements were made at the time of trial and the learned Sessions Judge finding more than *prima facie* case against the present petitioners came to the conclusion that the aforesaid statements leads to the only conclusion that they were accompanying the accused Karam Singh when he committed the murder of his brother Nirmal Singh. This Court is of the considered view that the statements of the aforesaid persons at the time of trial would outweigh the conclusions drawn by the Superintendent of Police during investigation for the purpose of considering the application under Section 319 Cr.P.C for arriving at a more than *prima facie* satisfaction. Therefore, no illegality or infirmity can be found in the impugned order dated 09.12.2022 passed by the learned Sessions Judge, Faridkot.

21. Consequently, the present revision petition is dismissed.

CRM-M-3378-2023

22. The present petition has been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioners in FIR No. 76 dated 01.06.2021, under Sections 302, 307 and 34 IPC, registered at Police Station Sadar Kotkapura, District Faridkot.

23. Learned counsel for the petitioners has submitted that the petitioners may be granted anticipatory bail since they have been exonerated by the police and therefore, their custodial interrogation is not required.

24. Learned State counsel has submitted that so far as the petitioner Jasvir Singh is concerned, as per the allegations and also the statement made by the wife of the deceased while deposing at the time of trial the petitioner Jasvir Singh used his double barrel .12 bore gun and fired from the same but it did not hit anybody. He submitted that the gun has still not been surrendered by him. He submitted that so far as the petitioner Jaswinder Singh is concerned, even as per the FIR itself, a direct role attributable to him was that he was having live



cartridges which were supplied by him to his brother who fired upon the son of the deceased which hit on his neck and left hand and he collapsed on the ground being injured. He also submitted that the custodial interrogation of the petitioners is required for the purpose of qualitative investigation and for elicitation of truth and has therefore prayed for dismissal of the present petition.

25. After hearing the learned counsel for the parties, this Court is of the considered view that considering the aforesaid facts and circumstances that a .12 bore gun was allegedly used by the petitioner Jasvir Singh and the cartridges of .32 bore revolver were allegedly supplied by the petitioner Jaswinder Singh to the co-accused on the spot and also the arguments raised by the learned State counsel that for qualitative investigation and for the purpose of elicitation of truth, custodial interrogation of the petitioners is required, carries weight and cannot be ignored.

26. This Court is of the considered view that no ground is made out for the grant of anticipatory bail to the petitioners.

27. Consequently, the present petition is hereby dismissed.

28. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

16.07.2024
rakesh

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