

107+215+295

2024:PHHC.118983



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1.		CRM-35828-2024 in/and CRM-M-24639-2024(O&M) Date of decision: 10.09.2024
KULWINDER KAUR		Petitioner
	Versus	
STATE OF PUNJAB		...Respondent
2.		CRM-M-22347-2024(O&M)
BALJINDER SINGH ALIAS BALWINDER SINGH ALIAS GHUDDA		Petitioner
	Versus	
STATE OF PUNJAB		...Respondent
3.		CRM-M-34586-2024(O&M)
SIMRAN SINGH		Petitioner
	Versus	
STATE OF PUNJAB		...Respondent
4.		CRM-M-42352-2024 (O&M)
BAAJ SINGH		Petitioner
	Versus	
STATE OF PUNJAB		...Respondent
5.		CRM-M-42695-2024(O&M)
NIRVAIL SINGH ALIAS SARPANCH		Petitioner
	Versus	
STATE OF PUNJAB		...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Amit Agnihotri, Advocate,
for the applicant/petitioner in CRM-M-24639-2024

Mr. Rahul Bhargava, Advocate,
for the petitioner in CRM-M-22347-2024

Mr. S.K.Arya, Advocate,
for the petitioner in CRM-M-34586-2024

Mr. Karanjit Singh, Advocate,
for the petitioner in CRM-M-42352-2024

Mr. Rishu Mahajan, Advocate,
for the petitioner in CRM-M-42695-2024

Mr. Sahil R. Bakshi, AAG, Punjab.

KULDEEP TIWARI, J. (Oral)

CRM-35828-2024 in CRM-M-24639-2024

1. Application is allowed as prayed for, subject to all just exceptions, and the photocopies of Aadhar Card, School ID card and certificate of school dated 05.08.2024, are taken on record as Annexures P-8 to P-10.

**CRM-M-24639-2024 &
connected petitions.**

2. Since all the petitions are arising out of a common FIR, wherein, a common relief of regular bail has been sought, therefore, being amenable for common decision, the same are taken up together.

3. Through the instant petition, the petitioners crave for indulgence of this Court for his being enlarged on regular bail, in case FIR No.274 dated 14.12.2023, under Sections 302, 307, 452, 427, 211, 212, 120-B, 148 and 149 of the IPC, and under Sections 25/27/54/59 of the Arms Act, registered at Police Station Gharinda, District Amritsar.

4. Separate short replies dated 09.09.2024, by way of an affidavit of

Sh.Yadwinder Singh, DSP, Sub-Division Attari, Amritsar (Rural), has been filed, by the learned State counsel today in Court in CRM-M-22347-2024, CRM-M-24639-2024 and CRM-M-34586-2024, as well as the custody certificates *qua* the petitioners, which are taken on record, with copies thereof supplied to learned counsel for the petitioners.

5. Learned State counsel submits that the reply in other two petitions CRM-M-42352-2024 and CRM-M-42695-2024 could not be filed, however, replies filed in other three petitions would suffice for the purpose of adjudication of these two bail petitions as well, and aforesaid replies may be read as a reply to these petitions as well.

ALLEGATIONS AGAINST THE PETITIONERS

6. In the instant case, the prosecution agency was set into motion on a statement made by one Shamsher Singh, son of Bikramjit Singh, to the extent that Vishal, and Karamjit Singh, attacked the complainant party, alongwith other co-accused, and the present petitioners, in which Vishal and Karamjit Singh caused gunshot injury to the uncle of the complainant, i.e. Manjit Singh alias Laddi, and Bikramjit Singh. Subsequently, Manjit Singh alias Laddi, succumbed to his injuries, as suffered due to gunshot. The relevant extract of the FIR reads as under:-

“Statement of Shamsher Singh son of Bikramjit Singh resident of Rangarh aged about 32 years, Mobile no. 79867-82352, stated that I am resident of above-mentioned address and do work as a laborer. My father Bikramjit Singh is a respectable person of the village and is pursuing for upcoming elections of Sarpanch and he used to work for village with regard to the same. That Kuldeep Singh son of Bhag Singh of our village had visiting terms in our house and also he was having land dispute with Hardeep Singh son of Mahinder Singh of our village and due to which Kuldeep Singh, Harjit Singh and other persons of village gathered in our house. That on yesterday night at about 11:30/12:00 PM, Hardeep Singh along with Nirvail Singh Sarpanch and other persons raised hue and cry, abused and also claimed that they would take possession on the land of Kuldeep Singh forcibly/illegally. Today at about 8:30 PM, I along-with my father,

other persons and Kuldeep Singh gathered and to make complaint reached at the house of Hardeep Singh where Karamjit Singh was already present. On seeing us, Karamjit Singh on way to his home made phone call to ut Nirvail Singh Sarpanch and told him to reach at the spot. Then on asking, Hardeep Singh started abusing us and, therefore, we turned back towards our street and thereafter, from the front side of street/Nirvail Singh Sarpanch) his son Vishal Singh armed with pistol, Jashan Singh son of Nirvail Singh armed with pistol, Sukhwant Singh @ Ganja son of Dilbag Singh, Satnam Singh son of Hardeep Singh, Simran Singh son of Dilbag Singh, Amarbir Singh son of Rajinder Singh resident of Rangarh came while raising Lalkaras and then from behind Karamjit Singh son of Baglor Singh resident of Rangarh armed with pistol also came. Then Amarbir Singh raised Lalkara to catch hold us and let them be taught a lesson for taking possession of land. On which Karamjit Singh fired with his pistol which hit on the right waist of my uncle/Chacha Manjit Singh @ Laddi and then Vishal Singh fired with his pistol which hit on the right thigh of my father Bikramjit Singh on which we raised hue and cry of "Maar Dita-Maar Dita" and ran towards our house on which all of them also entered into our house and they all broke the vehicle make Bolero standing in our house. That Baaj Singh son of Gulzaar Singh and Suba Singh son of Santokh singh resident of rangarh also accompanied them. On hearing our hue and cry, all the people of village also gathered there on which all the above-said accused along-with their weapons while firing ran away from the spot. Then I along-with my companions and Harjit Singh after arranging the vehicle send my uncle/chacha Manjit Singh @ Laddi who was breathing and was lying on the ground to Arora Hospital. Then after arranging vehicle, I took my father to Civil Hospital, Amritsar from where doctor referred him to Amandeep Hospital, Amritsar. Then I came to know that my uncle/chacha has also been taken to Amandeep Hospital and during his treatment, he has died and my father Bikramkjit Singh is under treatment at Amandeep Hospital. All the abovesaid 1. Karamjit Singh, 2. Amanbir Singh 3. Nirvail Singh, 4. Vishal Singh, 5. Jashan Singh, 6. Sukhwant Singh, 7. Satnam Singh, 8. Simran Singh, 9. Baaj Singh, 10. Suba Singh and 3-4 unknown persons have fired and killed my uncle/chacha Manjit Singh and also with intention to kill my father Bikramjit Singh have given injuries to him. That they have done wrong by attacking on our house. Legal action be taken against them and justice be delivered to me. Statement is being written, heard and the same is correct. SD/ Shamsheer Singh, signed/- Manmeetpal Singh INSP SHO police station Gharinda. Dated 14.12.2023."

7. In the instant case, a total 10 persons were arraigned as an accused by name, in the FIR (*supra*) alongwith 3-4 unknown persons. During investigation, total 15 persons are arraigned as an accused, out of which, 10 have already been arrested, and one Jasbir was declared as innocent, against whom the allegation of harbouring of main accused-Vishal was levelled. Four persons who were arraigned as accused either in the FIR or during investigation, have still not been

arrested.

8. After conclusion of the investigation, a final report has been filed against 10 accused persons, including present petitioners, on dated 13.03.2024, but the charges are yet to be framed by the learned trial court concerned, although, the *Illaqa* Magistrate has proceeded to commit the case to the Court of Sessions.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS IN CRM-M-24639-2024 AND CRM-M-22347-2024

9. Learned counsel appearing on behalf of petitioners-Kulwinder Kaur and Baljinder Singh, submits that they were implicated in the instant FIR, on a disclosure statement suffered by the co-accused.

10. They further submitted that there are two incidents mentioned in the FIR (*supra*). In the first incident, in which gunshot injuries alleged to be caused to injured, and the deceased, all the accused were named in the FIR, and there was no allegation that some unknown persons were present at the spot. So far as, second incident is concerned, though it is mentioned that some unknown persons have also come on the spot, but there is no allegation against them in the FIR, except for causing ransack in the house of the complainant, and firing in open air.

11. So far as the petitioners-Kulwinder Kaur and Baljinder Singh, are concerned, even as per the prosecution, they were empty handed, and no injury is attributed at all to them, as the injury to the deceased or the victim are caused by co-accused.

12. Finally, they submit that the name of petitioner-Kulwinder Kaur surfaced in the disclosure statement of co-accused-Vishal, simply because she is a mother, however, the evidentiary value of such disclosure statement is yet to be examined, by the learned trial court concerned. Even in the disclosure statement, no overt act is attributed either to Kulwinder Kaur, or Baljinder Singh.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER IN
CRM-M-42695-2024**

13. Learned counsel for the petitioner-Nirvail Singh, submits that the petitioner being a sarpanch of the village, was involved in the instant FIR, and secondly, because his son is the main accused in the instant FIR. Further, no injury whatsoever, is attributed to the petitioner-Nirvail Singh, either to the deceased or to the injured victim.

14. He further submits that the petitioner-Nirvail Singh, is only involved in the instant FIR, so that he could not contest the next panchayat elections.

15. He also submits, that even in the final report there is no inculpatory evidence, with the prosecution to connect petitioner-Nirvail Singh, with the present crime.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER IN
CRM-M-42352-2024**

16. Learned counsel for the petitioner-Baaj Singh, submits that in the FIR two occurrences have been mentioned/alleged. In the first occurrence, when the fight took place, name of petitioner-Baaj Singh, was not there, and only in that occurrence, the deceased and the injured received gunshot injuries, whereas, in the second occurrence, no one suffered any injury, where his name was figured, and therefore, he cannot be held responsible for the act of Vishal and Karamjit Singh, who caused gunshot injuries to the deceased and the victim in the first occurrence.

17. He finally, submits that even as per the prosecution, the only allegation against the petitioner (Nirvail Singh), is that of his being present with other co-accused, that too unarmed at the time of occurrence, and further, no role is attributed to him.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER IN
CRM-M-34586-2024**

18. Learned counsel for the petitioner-Simran Singh, submits that though the present petitioner was present at the place of occurrence, but the only role attributed to him is that he raised *lalkara* alongwith other co-accused.

19. He further submits that petitioner-Sirman Singh has no relation with the main accused, and only because of the village politics his name has been incorporated in the instant FIR.

20. Finally, he submits that no recovery whatsoever, has been effected from the present petitioner, which could connect him with the present crime.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

21. *Per contra*, the learned State counsel, has vociferously opposed the grant of regular bail to the present petitioners, and submits that except Kulwinder Kaur and Baljinder Singh, all other accused have been specifically named in the FIR (*supra*), and who being a member of an unlawful assembly, attacked upon the complainant party, in which one person, namely Manjit Singh, has succumbed to injuries, as caused by a gunshot, and one more person, who also suffered a gunshot injury, but he luckily survived the same.

22. He further submits that three persons were alleged to be carrying pistols, therefore, their intention could very well be gathered, which was to cause fatal injuries to the complainant party.

23. He also submits that in the FIR, there are two occurrences, which have been mentioned. In the first occurrence, the complainant party has committed murder of Manjit Singh alias Laddi, and caused injuries to Vikramjit Singh, and thereupon, they did not stop here, rather they again entered the house of the complainant, and ransacked his house, and while leaving the house also, they open

fired in the air.

24. He over and above submits that no prosecution witness has been examined till date, therefore, in case the petitioners are granted the relief of regular bail at this stage, they may influence the prosecution witnesses, and may cause hindrance in the conclusion of the trial.

25. Finally, he, on instructions imparted to him by the police official concerned, submits that charges are yet to be framed, and the prosecution has total 25 prosecution witnesses in the final report.

ANALYSIS

26. Before embarking upon the process of evaluating the arguments addressed by the learned counsels for the parties and penning down any opinion upon the instant petition, it is deemed imperative to capture an overview of some significant legal propositions.

27. *“Bail is the Rule and Jail is an Exception”*. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled ***“State of Rajasthan V. Balchand alias Baliay”, 1977 AIR 2447, 1978 SCR (1) 535***. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

28. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is

“the presumption of innocence”, besides the gravity of offence(s) involved.

29. In “***Gurbaksh Singh Sibbia v. State of Punjab***”, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out by the Hon’ble Supreme Court with great felicity as follows:-

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King Emperor, AIR 1924 Calcutta 476 (479, 480) that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy cases observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor, AIR 1931 Allahabad 504 (SB) it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the Court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson, AIR 1931 Allahabad 356 at p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It

was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

XX

XX

XX

29. In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail".

30. In American Jurisprudence (2d, Vol. 8, page 806, para 39) it is stated :

"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

30. Also, in ***"Gudikanti Narasimhulu and others Versus Public Prosecutor, High Court of Andhra Pradesh"***, 1978 AIR (Supreme Court) 429, the Hon'ble Supreme Court, speaking through Krishna Iyer, J., has enunciated the principles of bail thus :

"9. Thus the legal principle and practice validate the court

considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record-particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habitual, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the member of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bifocal interests of justice - to the individual involved and society affected.

11. We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, 'community roots' of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy

favouring release justly sensible.

12. A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offences while on judicially sanctioned 'free enterprise', should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution.

13. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding if that be so - of innocence has been recorded by one court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad

record and policy prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal.”

31. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law, and the rival submission, and is of the considered opinion that the instant petitions are amenable for being allowed.

32. The reason for forming the above inference emanates from the *factum* that:- (i) So far as petitioners-Kulwinder Kaur and Baljinder Singh, are concerned, they are not named in the instant FIR, and even in the disclosure statement, no overt act is attributed to them, with regard to causing injury to the deceased or the injured; (ii) no recovery, whatsoever, is effected from any of the petitioners/accused, which could connect them with the instant crime; (iii) whether, all the petitioners/accused with the common object caused injuries, to the deceased and the injured, is a moot question of law, which is yet to be established by the prosecution by adduction of evidence, that too by the learned trial court concerned, at an appropriate stage of the trial; (iv) petitioner-Baaj Singh, specifically not named in the earlier incident, rather as per the FIR, he reached after the first occurrence; (v) as per the case of the prosecution only three persons were carrying pistols, i.e. Vishal, Karamjit and Jashan. All others petitioners, were unarmed, even they were stated to be present on the spot. Whether, all of them were having a common intention, is a moot question of law, which is to be decided by the learned trial court concerned, at an appropriate stage of the trial; (vi) it is not under dispute that all the petitioners are first offenders, and none of them, are involved in any other criminal case; (vii) All the petitioners have suffered

incarceration of approximately 8-9 months, as on today.

FINAL ORDER

33. Considering the hereinabove made discussion, this Court deems it fit and appropriate to grant the concession of regular bail to the all petitioners. Therefore, without commenting upon the merits and circumstances of the present case, the present petitions are **allowed**. The petitioners are ordered to be released on bail on furnishing their respective bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.
34. However, it is clarified that if in future, the petitioners are found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court. Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.
35. However, anything observed here-in-above shall have no effect on the merits of the trial, and is only meant for deciding the present petitions.
36. All pending application(s) stand **disposed** of accordingly.
37. A photocopy of this order be placed on the files of the connected cases.

10.09.2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. :
Whether Reportable. :

Yes/No
Yes/No