



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

108+110

Date of decision: 29.08.2024

1.

CRM-M-37938-2024 (O&M)

JAGJIT SINGH @ JAGGA

....Petitioner

Versus

STATE OF PUNJAB

...Respondent
2.

CRM-M-23062-2024

HARDEEP SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent
3.

CRM-M-20132-2024

SUKHVIR SINGH ALIAS SEERA

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. A.K. Goel, Advocate
for the petitioner in CRM-M-37938-2024.

Mr. Liaqat Ali, Advocate
for the petitioner in CRM-M-23062-2024.

Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai, Advocate &
Mr. Amritpal Singh Mann, Advocate
for the petitioner in CRM-M-20132-2024.

Dr. Buta Singh Bairagi, Advocate
for the complainant.



KULDEEP TIWARI. J.(Oral)

CRM-33369-2024

1. For the reasons mentioned in the application, the same is **allowed** and the application is preponed from 21.10.2024, to today itself, and the main case i.e. CRM-M-37938-2024, is taken up on Board for hearing.

CRM-M-37938-2024, CRM-M-23062-2024 & CRM-M-20132-2024

2. In all the three petitions, the petitioners craves for indulgence of this Court for they being enlarged on regular bail, in case FIR No.71 dated 19.09.2023 under Sections 302 and 120-B IPC, and Section 212 IPC (added later on), read with Sections 25 and 27 of the Arms Act, 1959, registered at Police Station Mehna, Moga, Tehsil and District Moga, therefore, being amenable by common decision, same are taken up together.

ALLEGATIONS AGAINST THE PETITIONERS

3. In the instant case, the prosecution agency was set into motion on a complaint made by one Karamjit Kaur alias Navdeep Kaur Gill, wherein, she alleged that two unknown persons, entered into their house, and open fired gunshots, which had hit her husband-Baljinder Singh, and consequently he succumbed to his injuries. She further alleged that when she was taking her injured husband to the hospital, her injured husband in front of some other persons, told her that the assailants were sent by Sukhvir Singh alias Seera, Hardeep Singh alias Deepu, Jagjit Singh alias Jagga and Gurcharan Singh Sidhu. On the basis of above, the FIR (supra), was registered against abovenamed persons, which includes the present petitioners. In the instant case, the investigation was carried out by the Special Investigating Team (SIT), and a total of 16 persons were found to be involved in the commission of the instant



crime, and out of these 13 have already been arrested, and three are on run.

4. What surfaced from the investigation that no role of Sukhvir Singh alias Seera, Jagjit Singh and Hardeep Singh (present petitioners), and other co-accused Gurcharan Singh Sidhu, was established, and the the head of the SIT concerned, in its report dated 08.12.2023 (Annexure P-3), recorded as under:-

“Besides this, call details of mobile numbers 98142- 91798, 98159- 91798, 98145-00648, 89868-40783, 99144-08585 and 89068-67000 of Sukhveer Singh @ Seera, Hardeep Singh @ Deepu, Jagjit Singh @ Jagga residents of Dalla and Gurcharan Singh @ Sidhu resident of Takhanvadh from 17.09.2023 to 19.09.2023 were obtained and perused. On perusal of call detail reports also, no talks have been found to have been made by above said four accused with persons committing the murder murder.”

5. The report was then sent to the Deputy District Attorney (Legal), who after perusal thereof, opined vide Annexure P-4, dated 14.12.2023, that after making entry regarding the above investigation, the investigating agency may file an application under Section 169 Cr.P.C. for getting the release of the above named four persons from the custody, as *qua* them no evidence was found by the prosecution. The relevant extract reads as under:-

“I have carefully perused the report dated 08.12.2023 of Special Investigation Team and documents attached. In the report of SIT, it has been written that during investigation no evidence has come on record against accused Sukhveer Singh @ Seera son of Gurtek Singh, Hardeep Singh @ Deepu son of Jaspal Singh, Jagjit Singh @ Jagga son of Gurnek Singh residents of Dalla and Gurcharan Singh @ Sidhu son of Buta Singh resident of Takhanvadh District Moga. Keeping in view the above said facts mentioned in the report of SIT, as per my opinion after making entry regarding above said investigation in case at this stage



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and in the event of above said persons to be in custody, application under section 169 Cr.P.C is liable to be filed in concerned court for getting them released from custody and Arshdeep Singh @ Arsh Dalla son of Charanjit Singh resident of village Dalla is required to be named as accused in the present case. ”

6. Thereupon, the Superintendent of Police, Moga, on 15.12.2023 (Annexure P-5), though concur with the inquiry report of the SIT, and opinion of the Deputy District Attorney (Legal), dated 08.12.2023 (Annexure P-4), however, he opined in the report (supra), that it would be better if the prosecution agency file a final report *qua* the above named persons, so that they may not get the benefit of default bail, however, on receipt of the FSL report, supplementary challan was presented. The relevant extract of the opinion of the Deputy District Attorney (Legal), reads as under:

“.....In these circumstances, as per my opinion, it will be appropriate to submit report u/s 173(2) Cr.P.C in court against the aforesaid accused on the basis of facts of the case for orders so that accused may not get benefit of compulsive bail u/s 167(2) Cr.P.C. After evidence on record and receipt of report of F.S.L. Lab Bathinda, it will be appropriate to present supplementary challan under section 173(8) Cr.P.C on its basis.”

7. Thereupon, the Deputy District Attorney (Legal), Moga, opined to file the final report/challan, and to file a supplementary challan, after the receipt of the FSL report from Bathinda.

8. It is not under dispute that now the FSL report has been received. Even the short reply, dated 12.08.2024, which has been filed, by way of an affidavit of Sh.Amarjit singh, DSP, Dharamkot, District Moga, which is ordered to be taken on



record, reflects that after receipt of the FSL report, now the supplementary challan has been filed.

9. The reply reflects that no data was found, which can relate the present petitioners with the instant crime. The relevant extract of the reply reads as under:

“16. That it is submitted here that vide report no.0079/DFL/2023, the Digital Forensic Lab, Bathinda Range, Bathinda, it was reported that during analysis no data related to murder was found. After receiving said report, supplementary challan was presented before the Ld. Court on 14.03.2024. Charge against petitioner and others have been framed on 31.07.2024 and now case is fixed for 12.09.2024 for prosecution evidence.”

10. In view of the above facts and circumstances, this Court has put a specific query to learned State counsel, that once the FSL report (supra), reflects no data connecting the present petitioners with the murder of the deceased-Baljinder Singh, why the prosecution has not till date took a final decision with regard to the accused persons (petitioners), specifically, when in the reply (supra), filed before this Court, the stand of the prosecution is that till date there is no incriminating evidence available against with the present petitioners, to which he answered that he is yet to have instructions from the quarters concerned in this regard.

11. In view of the above, this Court vide order dated 13.08.2024, directed the learned State counsel to file a specific reply, disclosing therein, about their final opinion *qua* the present petitioners, on or before the next date of hearing.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

12. The learned counsel for the petitioners, in his asking for the



hereinabove extracted relief, has made the following submissions:-

- (i) There is no incriminating evidence found by the prosecution agency against the present petitioners, so far, and even the application for discharge, with regard to the present petitioners have been moved by the prosecution before the learned trial Court concerned, therefore, further incarceration of the petitioners is totally unwarranted;*
- (ii) Petitioners- Hardeep Singh @ Deepu and Sukhvir Singh @ Sira have suffered incarceration of approximately 11 months, as on today, and petitioner Jagjit Singh @ Jagga has suffered incarceration of more than 09 months, as on today;*
- (iii) The final report under Section 173 Cr.P.C., had already been filed before the learned trial Court concerned;*
- (iv) Conclusion of trial will take long time, therefore, keeping the petitioners behind the bars will not serve any purpose.*

SUBMISSIONS OF THE LEARNED STATE COUNSEL

13. Today, learned State counsel has filed a short affidavit dated 28.08.2024, of Sh. Gursharanjit Singh, PPS, Superintendent of Police (H), Moga, on behalf of respondent-State. The same is taken on record. Copy of the same has been supplied to the opposite counsel.

14. A perusal of the reply (supra), reflects that since no incriminating evidence was found against the present petitioners, now the prosecution has filed a supplementary final report, along with an application for discharge, which is now



pending consideration before the learned trial Court concerned. The relevant extract of the same reads as under:-

12. That it is further submitted here that, after perusing all the record, the deponent submitted his report dated 19.08.2024 before the SSP, Moga that during the investigation conducted by SIT, no evidence came on the file to connect Sukhvir Singh @ Seera son of Gurtek Singh, Hardeep Singh @ Deepu son of Jaspal Singh, Jagjit Singh @ Jagga son of Gurnek Singh CA residents of village Dala, Gurcharan Singh @ Sidhu resident of village Takhanwadh District Moga with the crime. However, the then SHO, Police Station Mehna had presented the challan in the present case on 18.12.2023 and charge against the accused has already been framed on 31.07.2024. Whereas, as no evidence came on file to connect said persons with the crime, during investigation conducted by the SIT, so they were liable to be get discharged from the present case. So, at this stage the opinion from DDA (L), Moga be obtain regarding discharge of said person from the present case.

13. That on the basis of report submitted by the deponent, the opinion from Deputy DA (L), Moga was obtained. In his report dated 21.08.2024 DDA (L), Moga opined that as per report of the deponent no evidence came on file against said persons, so supplementary challan can be moved and any other requisite application can also be moved. After obtaining the legal opinion supplementary challan by mentioning the names of Sukhvir Singh Seera son of Gurtek Singh, Hardeep Singh Deepu son of Jaspal Singh. Jagjit Singh Gurcharan Singh Jagga son of Gurnek Singh residents of village Dala. Sidhu resident of village Takhanwadh District Moga, in column no. 2 was presented before the Ld. Court on 22.08.2024. Apart from this on same day, application for discharging Sukhvir Singh @ Seera son of Gurtek Singh, Hardeep Singh @ Deepu son of Jaspal Singh, Jagjit Singh @ Jagga son of Gurnek Singh residents of village Dala, Gurcharan Singh @ Sidhu resident of village Takhanwadh District Moga has been moved before the Ld. Trial Court and now same is fixed for 28.08.2024.

15. Learned State counsel has further placed on record the custody



certificates *qua* the petitioners, as issued by the Central Jail Faridkot. The same are taken on record. A perusal of the custody certificate reveals that the petitioners- Hardeep Singh @ Deepu and Sukhvir Singh @ Sira have suffered incarceration of 10 months and 29 days, as on today, and petitioner Jagjit Singh @ Jagga has suffered incarceration of 09 months and 02 days, as on today. Learned State counsel on instructions, imparted to him by Inspector Arshpreet Grewal, submits that after conclusion of the investigation, the final report under Section 173 Cr.P.C., had already been filed before the learned trial Court concerned.

SUBMISSIONS OF LEARNED COUNSEL FOR THE COMPLAINANT

16. Although the learned counsel for the complainant vociferously opposed the grant of regular bail to the present petitioners, but he fairly submits that the investigating agency has filed the discharge application *qua* all the accused persons.

ANALYSIS

17. 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.

18. “*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 Baliy*”, 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.

19. 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.

20. 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

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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.

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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.”

21. 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

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bail applicant. It makes sense to assume that a man on bail has a better chance to prepare of 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

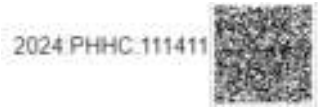


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the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face 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.”

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

23. The reason for forming the above inference emanates from the factum that:- (i) As on date, there is no incriminating evidence against the present petitioners; (ii) An application for discharge filed by prosecution itself *qua* the present petitioners, is pending consideration before the learned Magistrate concerned; (iii) Petitioners- Hardeep Singh @ Deepu and Sukhvir Singh @ Sira have suffered incarceration of 10 months and 29 days, as on today, and petitioner Jagjit Singh @ Jagga has suffered incarceration of 09 months and 02 days, as on today; (iv) The final report under Section 173 Cr.P.C had already been filed; (v) No



fruitful purpose would be served by keeping the petitioners behind the bars; (vi)
Trial is not likely to conclude anytime soon.

FINAL ORDER

24. Considering the hereinabove made discussion, this Court deems it fit and appropriate to grant the concession of regular bail to the 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 of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

25. 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.

26. All pending application(s) stand **disposed** of accordingly.

27. 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.

29.08.2024			(KULDEEP TIWARI)
amandeep			JUDGE
	Whether speaking/reasoned.	:	Yes/No
	Whether Reportable.	:	Yes/No