

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-43428-2023 (O&M)
Date of Decision: 07.02.2024

...Petitioner

V/S

...Respondent

CRM-M-43514-2023 (O&M)
Date of Decision: 07.02.2024

...Petitioner

V/S

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Judgepreet Singh Warring, Advocate
for the petitioner in CRM-M-43514-2023.

Mr. Lajpat Rai Sharma, Advocate for
Mr. Parvesh Sachdeva, Advocate for the petitioner
in CRM-M-43428-2023.

Mr. Subhash Godara, Addl. AG Punjab.

Mr. Kamal Narula, Advocate for the complainant.

HARPREET SINGH BRAR J. (Oral)

1. This common order of mine shall dispose of the abovesaid two petitions as both are arising out of the same FIR, however, the facts are borrowed from CRM-M-43514-2023.

2. By way of instant petitions, the petitioners are praying for grant of regular bail in case bearing FIR No. 66 dated 17.04.2022 registered under Sections 302, 324, 323, 148, 149 and 120-B of Indian Penal Code at Police Station Sadar Fazilka, District Fazilka.

3. Succinctly, the above-said case FIR was registered on the statement of one Jaspreet Singh son of Jaswinder Singh resident of Village Ojhawali, Tehsil and District Fazilka, alleging therein that on 16.04.2022 at about 11:00p.m., he went to the shop of his uncle Chhinda Singh, who runs a chicken centre at bus stand of their Village and when they were closing the shop, some persons namely, Sukhchain Singh, armed with kappa, Prem Singh, armed with kappa, Jagga Singh, armed with kappa, Baljinder Singh, armed with dang, Jaswinder Singh S/o Makhan Singh, all residents of Village Ojhawali, accompanied by Kamal resident of Village Jhok Dipulana, armed with kappa, Happy son of Makhan Singh, armed with kappa and Sonu resident of Village Jhok, Dipulana, armed with kirpan came there and started quarreling with his uncle Chhinda Singh, as he refused to give eggs, meat demanded by them. It is stated that upon hearing the noise, another uncle of the complainant namely, Paramjit Singh, complainant's father Jaswinder Singh and aunt (Chachi) Saroj Rani wife of Chhinda Singh, also came at the spot and tried to resist the act of the assailants but they did not stop and Jaswinder Singh raised a lalkara, by saying that teach them a lesson for quarreling with them whereupon, Sukhchain Singh gave a kappa blow hitting left side of head of Paramjit Singh; Prem Singh gave a kappa blow hitting left thigh of Paramjit Singh, Kamal gave kappa blow from its reverse side on the left shoulder of Paramjit Singh; Jagga Singh gave a kappa blow(reverse side) hitting Paramjit Singh on his left foot; Jagga Singh gave a kappa blow hitting Jaswinder Singh near his right eye; Prem Singh gave a kappa blow hitting Jaswinder Singh on the left side of his neck; Happy gave a kappa blow (reverse side) hitting Jaswinder Singh on his left shoulder. Sonu gave

kirpan blow hitting Jaswinder Singh on his right under arm and some unknown persons gave injuries with a wooden log injuring Jaswinder Singh at his left elbow and middle finger of left hand. Thereafter, Baljinder Singh is alleged to have given three continuous dang blow to Jaswinder Singh hitting his both the thighs as well as left arm. Then Sukhchain Singh is alleged to have given a kappa blow hitting Jaswinder Singh on his left wrist, Prem Singh allegedly gave a kappa blow hitting the complainant below his left knee and Kamal gave kappa blow hitting on his left bicep. Thereafter, some un-known persons gave dang blow hitting Chhinda Singh on his right knee and Baljinder Singh allegedly gave a dang blow hitting Chhinda Singh on his left knee as well as foot. Then Sukhchain Singh gave a kappa blow hitting Chhinda Singh on his left elbow from its reverse side and when Baljinder Singh tried to gave a dang blow on the head of Chhinda Singh, Chhinda Singh raised his right hand to save from that blow, which hit on his ring finger. Then Happy Singh gave a kappa blow hitting Chhinda Singh on his back. Thereafter, Baljinder Singh allegedly gave a dang blow hitting his aunt Saroj Rani, on her left arm. Upon raising hue and cry by the complainant party, all the assailants along with their respective weapons fled away from the spot on their respective motor cycles while raising lalkara. It is stated in the complaint that injured Saroj Rani and other injured persons were taken to Civil Hospital, Fazilka but since the condition of uncle of the complainant namely, Paramjit Singh and his father namely, Jaswinder Singh was serious; therefore, they were referred to G.G.S. Medical College and Hospital, Faridkot, for treatment.

4. Learned counsel for the petitioners *inter alia* contends that as per the opinion of the doctor with regard to the cause of death, a categoric

finding has been recorded that the deceased-Paramjit Singh has died due to injury No. 9 of Medical Legal Report, which has been caused by co-accused Sukhchain Singh. Petitioner-Jagga Singh is alleged to have caused injury from the reverse side on the left leg of the deceased and the petitioner Kamaljeet Singh @ Kamal is alleged to have given a *kappa* blow from the reverse side on the shoulder of the deceased and both the injuries are declared to be simple in nature and similarly situated co-accused Baljinder Singh has been granted regular bail by this Court vide order dated 02.06.2023 in CRM-M-50205-2022. The petitioners and Baljinder Singh have been involved in the present case with the aid of Section 148 and 149 of the Indian Penal Code.

5. Per contral, learned State counsel assisted by learned counsel for the complainant have opposed the prayer of grant of regular bail to the petitioners on the ground that the petitioners have actively participated in the alleged occurrence, in which the deceased-Paramjit Singh was killed and there is sufficient material available on record, which indicates the complicity of the petitioners in the alleged crime.

6. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioners are behind the bars for more than 01 year and 08 months. Trial of the case has not commenced till date and charges are yet to be framed. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

A two Judge Bench of Hon'ble Supreme Court in '**Satender**

Kumar Antil v. CBI’ (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

7. In view of the above, the instant petitions are allowed and the petitioners- Jagga Singh @ Vikram Singh and Kamaljeet Singh @ Kamal are ordered to be released on regular bail during trial on their furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.
8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

07.02.2024
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No