

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-49447-2022
Reserved on: 05.03.2024
Pronounced on: 13.03.2024
2024:PHHC: 036304

KASHMIR SINGH

. . . . PETITIONER

Vs.

STATE OF PUNJAB

. . . . RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. P.S. Ahluwalia, Advocate, with
Mr. Keerat Dhillon, Advocate,
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

Mr. Ranjan Lakhanpal, Advocate,
for the complainant.

DEEPAK GUPTA, J.

By way of this petition filed under Section 438 CrPC, petitioner prays for grant of anticipatory bail in case FIR No.36 dated 26.04.2022 (Annexure P1) registered under Sections 302/201/341/323/148/149 IPC at Police Station Mulepur, District Fatehgarh Sahib.

2. Reply/Status report by way of affidavit of Sukhbir Singh, PPS, DSP, Fatehgarh Sahib, District Fatehgarh Sahib, on behalf of the respondent-State, has already been filed.

3.1 FIR was lodged on the basis of a complaint made on 04.07.2019 by Smt. Surinder Kaur, resident of Mianpur, Tehsil and District Fatehgarh Sahib against the petitioner (Kashmir Singh), his two sons namely Gurpreet Singh & Daljit Singh @ Dalli besides others namely, Kuldeep Singh, Bhupinder Singh, Jagjit Singh and some unknown persons. It was alleged that Jashanpreet Singh (deceased), the maternal grandson of the complainant was

living with his *Nankas* (maternal grandparents) in village Mianpur. On 29.06.2019, at about 5:30 PM, said Jashanpreet Singh left with his friend Kulvir Singh @ Kala for village Rajwaha (*Sua*) for bathing. It was alleged that Sarpanch of the village i.e. Kashmir Singh (petitioner) and others came there, gave beatings to Jashanpreet Singh and then threw him in the canal with an intention to kill him. It was further alleged that matter was reported to the police but due to the political pressure, no action was taken.

3.2 Dead body of Jashanpreet Singh was recovered on 03.07.2019. DDR No.20 dated 03.07.2019 was recorded stating therein that further action will be taken after conducting postmortem examination. On the complaint of Surinder Kaur, a Special Investigation Team was constituted, which concluded that Jashanpreet Singh seemed to have died due to jumping in the canal water, time and again in an intoxicated condition and due to his contact with intense flow of water in canal. Viscera report was directed to be awaited. After receipt of the Viscera report, board of Doctors opined that cause of death was Asphyxia on account of drowning, which was ante-mortem in nature and sufficient to cause death in routine course of nature.

3.3 Status report reveals further that in the meantime, Balbir Singh, the father of late Jashanpreet Singh filed CRM-M-33284-2019 before this Court, which was decided on 27.04.2022. Another SIT was constituted by SSP Fatehgarh Sahib, which vide its report dated 21.04.2022 found that as per the instructions of Hon'ble Supreme Court in *Lalita Kumari Vs. State of U.P. and others*, AIR 2012 SC 1515 and also keeping in view the MLR of Kulvir Singh @ Kala, the FIR was required to be registered against petitioner and others. Accordingly, present FIR was registered.

3.4 After registration of the FIR, Sukhwinder Kaur wife of the

petitioner made two different applications dated 02.06.2022 against registration of the FIR; whereas, complainant Surinder Kaur made four different applications dated 18.06.2022, 25.08.2022, 30.08.2022 and 03.09.2022. On receipt of these six applications, SSP Fatehgarh Sahib again constituted an SIT vide order dated 10.05.2022, which found and concluded that on 29.06.2019, Jashanpreet Singh (deceased), Kulvir Singh @ Kala and Harinder Singh had come to minor canal in order to take bath, where a quarrel took place between Jashanpreet Singh & Kulvir Singh @ Kala on one hand and Kuldeep Singh, Bhupinder Singh and Jagjit Singh on other hand. Harinder Singh had already left. During this quarrel, Sarpanch Kashmir Singh (petitioner) had come to the spot and from his statement, it was clear that he had slapped Kulvir Singh @ Kala. SIT further concluded that Daljit Singh @ Dalli and Gurpeet Singh were not present at the spot. No evidence was found against them. It was recommended to delete Sections 148 and 149 IPC and to add Section 34 IPC. SSP Fatehgarh Sahib agreed with the report and directed SHO, Police Station Mulepur to take action accordingly.

3.5 Thereafter, raids were conducted to arrest the petitioner but he could not be found and rather, he moved the application for seeking anticipatory bail, which was dismissed by the Court of ASJ on 29.09.2022 and thereafter, he filed the present petition.

4.1 It is contended by ld. counsel appearing for the petitioner that petitioner is an old person aged 70 years, who had nothing to do with the dispute between the deceased & his companion with the other persons and that he had gone to the spot on receiving a call only to resolve the dispute being Sarpanch of the village. Ld. counsel has drawn attention towards the detailed investigation report dated 16.09.2019 (Annexure P2) conducted by the Special

Investigation Team, which was initially constituted and in this comprehensive report, it was found that there was no truth in the allegations. It was found that deceased had died due to drowning.

4.2 Ld. counsel has further drawn attention towards the postmortem report (Annexure P3), which indicates that there was no external mark of injury on the body of Jashanpreet Singh. Besides, the chemical examiner report (Annexure P4) reveals that diatom test on the body of deceased was found positive, indicating that he had died on account of drowning. Deceased had not suffered any injury in any manner as per the PMR and thus, the postmortem report to be read with chemical examiner report supports the conclusion drawn by SIT.

4.3 Ld. counsel contends further that none of these circumstances were taken into consideration by the Court of Sessions while rejecting the application of the petitioner for grant of anticipatory bail. Ld. Counsel submits that the petitioner is ready to join the investigation and that he is being implicated falsely only because he is the Sarpanch of the village.

5. Opposing the bail petition, ld. State counsel has drawn attention towards the gravity of offence and submits that interrogation of the petitioner is required.

6. Ld. counsel for the complainant filed separate reply opposing the petition by submitting that proceedings to arrest the petitioner had been earlier issued and as he was avoiding his arrest so as to join the investigation, and so, he is not entitled to anticipatory bail. Ld. counsel has referred to ***Prem Shankar Prasad Vs. The State of Bihar and others, AIR 2021 SC 5125*** and prayed for dismissal of the petition.

7. I have considered submissions of ld. counsels for all the sides

and have appraised the paper-book.

8. Occurrence took place on 29.06.2019. Dead body of Jashanpreet Singh was recovered on 03.07.2019. FIR was registered on 04.07.2019. As the status report would reveal, inquiry has been conducted in this case by as many as three Special Investigation Teams, constituted from time to time. The first report dated 16.09.2019 (Annexure P2) was submitted by Superintendent of Police, PBI, who was heading the SIT, which is quite comprehensive.

9. It will be relevant to reproduce the conclusion drawn by the said SIT, which read as under: -

“Conclusion Report: From the aforesaid circumstances and enquiry, from enquiry from both the parties and the concerned and from secret and declared enquiry it has been found that the applicant Surinder Kaur's grandson (dohta) Jashanpreet Singh S/o Sh. Balvir Singh R/o Village Chhajli, District Sangrur, was living at his naanka house at Village Miyanpur, P.S. Mulepur, Tehsil and District Fatehgarh Sahib from last around 02 years, who, on 29.06.2019, first by along with his friend Kulvir Singh alias Kala S/o Sh. Jasmer Singh, Harminder Singh S/o Sh. Jarnail Singh residents of Village Basantpura, P.S. Sadar Rajpura. District Patiala along with Jashanpreet Singh's one relative had gathered and first consumed liquor bottle by sitting at Village Pole's theka, where-from Jashanpreet Singh's relative had left with his some known and all three of them had gone on Harminder Singh's motorcycle to the sua (rajwaha) coming out of the Bhakhra Canal Narvana Branch at Village Reona Neevan Head at around 5:30 p.m., for bathing. Where Jashanpreet Singh and his friend Kulvir Singh alias Kala and Harminder Singh had started bathing in the sua after leaving behind the liquor bottle outside the sua. After bathing all three of them had come out of the sun and after drinking liquor peg they again started bathing and had been shouting loudly and had been harassing the by passers in inebriated state. All three of them were seen doing so by the eye witness Amanpreet Singh S/o Amrik Singh R/o Village Miyanpur, who was going to spray fertilizer to the jeeri in his land near the canal's head along with his friends. He had also stated that after the liquor bottle had got over, then one out of them had again brought a liquor bottle on motorcycle. Like this, out of all three of them Harminder Singh after bathing had sat on his motorcycle on the sua's street, then in the meantime the respondent Bhupinder Singh, his brother Jagjit Singh along with Kuldip Singh residents of Miyanpur who were going on a motorcycle via sua's street to Pagro Factory, Rajindergarh for taking money in lieu of the work done. When they were

about to pass from near Jashanpreet Singh, Kulvir Singh alias Kala and Harminder Singh etc., then due to the dirtiness that had spread there on account of the water, they had some mutual exchange of words. Then Jashanpreet Singh had held there motorcycle from behind and had thrown it down and Jashanpreet Singh and his friend Kulvir Singh had an argument with respondent Bhupinder Singh etc. In the meantime, Harminder Singh who was accompanying Jashanpreet Singh and Kulvir Singh had left from the spot taking along his motorcycle. Then Jashanpreet Singh and Kulvir Singh had started hurling bricks stones on respondent party's Bhupinder Singh etc. Then Bhupinder Singh etc. had also ran ahead of them for saving themselves and had started hurling bricks stones on Jashanpreet Singh etc. Then in the meantime a stone had hit Kulvir Singh in his head. Then Bhupinder Singh, Jagjit Singh, Kuldip Singh all three of them had ran away from them by running ahead of Jashanpreet Singh and Kulvir Singh on the canal street. In the meantime Jashanpreet Singh had jumped in the canal and while swimming he had gone to the canal's street and had sat there, and then he had jumped in the canal from the other side and while swimming he had reached the bags installed on the broken canal street and had sat there, who was seen doing so by the on the spot eye witness Amrik Singh S/o Swaran Singh, Balihar Singh S/o Kuldip Singh residents of Neevan Reona and Sukhwinder Singh alias Sukha S/o Joginder Singh R/o Village Miyanpur, is stated. When Jashanpreet Singh had jumped in the canal and had gone to the other side of the canal by swimming, then Bhupinder Singh at around 6:33 p.m. had called up his village's Sarpanch Kashmir Singh from his mobile and had informed him about it and had asked him to come on the spot. Then in the meantime, according to the independent witness Amrik Singh, Kuldip Singh S/o Gurcharan Singh R/o Village Miyanpur had hit Kulvir Singh with soti, who was left behind alone, who had ran into the chari fields. Thereafter Kashmir Singh, Sarpanch, Village Miyanpur had reached the spot on his motorcycle. At that time Jashanpreet Singh was not present on the spot. Then Kashmir Singh Sarpanch had tried to make understand Kulvir Singh alias Kala on the spot to stop him from fighting. In the meantime Jashanpreet Singh's naani applicant Surinder Kaur along with his neighbor boy Pargat Singh S/o Sh. Amrik Singh R/o Village Miyanpur had reached there on his motorcycle. When they had reached there, Kulvir Singh alias Kala got exaggerated and had started speaking ill and abusing Kashmir Singh Sarpanch also. On which Sarpanch Kashmir Singh had also snubbed Kulvir Singh alias Kala and had slapped him. During their this argument, on hearing the noise Amrik Singh S/o Swaran Singh R/o Village Reona Neevan, whose house is at a distance of 40/50 karma from the Nirvana Canal Bridge Branch Miyanpur, who while sitting on the cement chairs installed in front of his house had seen Jashanpreet Singh jumping in the canal and going to the other side and then after swimming had seen him sitting on the cement bags installed in the canal, had come

on the spot near them and said to them that the heavy boy who was swimming in the canal, first look for him. During this time, Satnam Singh alias Satta S/o Mukhtiar Singh R/o Jai Nagar, P.S. Khedi Gandiyan, District Patiala, Baildar, Punjab Irrigation Department, whose duty was at Bhakhra Canal Akash Rajwaha Head Neevan Reona from 2:00 p.m. to 10:00 p.m. had also come out of his room and had come there, according to whose statement, at that time Jagjit Singh alias Jagga was picking up the fallen motorcycle, but at that time the heavy boy was not there. Subsequently both the parties had given applications against each other to SHO P.S. Mulepur. After this, on 03.07.2019, Jashanpreet Singh's dead body was found from Gandiyan Khedi Canal. On 04.07.2019 the applicant Surinder Kaur had given this application against Kashmir Singh S/o Sh. Kartar Singh, Gurpreet Singh and Daljit Singh sons of Sh. Kashmir Singh, Kuldip Singh S/o Charan Singh, Bhupinder Singh and Jagjit Singh sons of Sh. Sukhchain Singh residents of Village Miyanpur and unknown persons for surrounding her grandson (dohta) Jashanpreet Singh S/o Sh. Balvir Singh R/o Village Chhajli, District Sangrur, age around 22 years on the canal on 29.06.2019 at 5:30p.m. and for killing him by throwing him in the canal. But from the so far secret and declared enquiry by the Special Investigation Team and from the statements of the on the spot eye witnesses, nothing of this sort has come to light. So far so, coming of Sarpanch's both sons on the scene of crime is also not verified, because none of the independent had verified about seeing Sarpanch's both sons Gurpreet Singh and Daljit Singh on the scene of crime. Besides, the call detail of the mobiles of Sarpanch's both sons was also obtained, on perusal of which it has been found that Sarpanch Kashmira Singh's son Daljit Singh's mobile No. 98883-38011's location of 29.06.2019 at the time of the incident is of Village Reona and the other son's mobile No. 98886-71102's location of that time has been found to be of Sarai Banjara, Village Basantpura. In which connection the CDRs of the mobile phones of the concerned and the video clips of the CCTV cameras installed at Basantpura was also examined. The pen drive pertaining to the concerned CDRs and video clips of the CCTV cameras is enclosed. But according to the statement of the eye witness Sukhwinder Singh alias Sukha S/o Joginder Singh R/o Village Miyanpur, whose land is near Reona Neevan Head Canal, on 29.2.2019 in the evening at around 6, after rounding his fields when he had reached Reona Neevan Head, then he had seen Jashanpreet Singh jumping in the canal, crossing the canal, sitting on the street and then again crossing the canal by swimming and then subsequently sitting on the bags installed on the broken canal street and from the statements of other on the spot witnesses Amrik Singh S/o Swaran Singh, Amanpreet Singh S/o Sh. Amrik Singh residents of Village Miyanpur, Balihar Singh S/o Kuldip Singh and from the so far circumstances that had come to light from enquiry it appears that Jashanpreet Singh had died due to repeatedly jumping in canal in inebriated state, for drowning due to being entangled

in the fast current of the water. But even then the post mortem of the dead body of the deceased Jashanpreet Singh had been got conducted by Police from Board of Doctors from Civil Hospital, Fatehgarh Sahib and the deceased's viscera had been sent to the Chemical Examiner Laboratory, Kharar, for examination. In the deceased Jashanpreet Singh's post mortem report, the Board of Doctors, while giving their OPINION, has written in the column of Cause of Death that 'In are opinion will be given after the receipt of chemical examiner report and his pathological report", whose viscera examination report is yet to be received from the Chemical Examiner Laboratory, Kharar. On receipt of which, after obtaining opinion from the Board of Doctors, further proceedings shall be undertaken according to the prevailing circumstances. But from the so far enquiry conducted by the Special Investigation Team, since no truth has come to light about the allegations being alleged by the applicant party, it is recommended to file the application.

Sd/- Superintendent of Police, PBI, Fatehgarh Sahib 3.8.19

Sd/- Deputy Superintendent of Police, Sub-Division, Fatehgarh Sahib 3.8.19

Sd/-SHO, P.S. Sirhind 3.8.19

SIT Report approved

Seen & Filed

Sd/-6/8/19

Senior Superintendent of Police,

District Fatehgarh Sahib

Stamp O/o Senior Superintendent of Police, District Fatehgarh Sahib

No. 1081 Dated 16.09.2019”

10. Annexure P3 is the postmortem report, revealing that PME on the body of Jashanpreet Singh was conducted on 04.07.2019 and no external injury was found on his body. Annexure P4 is the copy of chemical examiner report dated 02.12.2019, revealing that diatom test was found to be positive, thus, indicating that deceased Jashanpreet Singh had inhaled the water. Based upon the said chemical examiner report, a Board of Doctors gave its opinion (Annexure P5) regarding cause of death concluding that:

‘cause of death was Asphyxia due to drowning which is ante mortem in nature and sufficient to cause death in routine course of nature’.

11. Thus, the conclusion drawn by the first SIT in its report dated 16.09.2019 (Annexure P2) is *prima facie* corroborated by the postmortem report to be read with chemical examiner report and the cause of death as given by the board of doctors.

12. The second SIT was constituted after filing of CRM-M-33284-2019 in this Court by the father of the deceased and the said SIT in its report dated 21.04.2022 recommended to register the FIR in view of the instructions of Hon'ble Supreme Court in ***Lalita Kumari's case (Supra)***. It is thereafter that the FIR was registered. Then, a third SIT was constituted in view of the two representations made by the family members of the petitioner and four representations made by the complainant of the case and the said SIT in its report dated 10.05.2022 concluded that quarrel had taken place between Jashanpreet Singh & Kulvir Singh @ Kala with Kuldeep Singh, Bhupinder Singh and Jagjit Singh on 29.06.2019 and it is during that quarrel that petitioner Kashmir Singh had come and had slapped Kulvir Singh @ Kala. The said report does not indicate involvement of the petitioner either in giving beatings to the deceased or throwing him in the canal, as is alleged in the FIR.

13. No doubt that after the report of the third SIT, raids were conducted to arrest the petitioner and his application for anticipatory bail was dismissed by the Court of Sessions, but that in itself cannot be a reason to decline the benefit of anticipatory bail to the petitioner as has been contended by counsel for the complainant.

14. In the case of ***Prem Shankar Prasad (Supra)***, it has been held by Hon'ble Supreme Court that if anyone is declared as an absconder or proclaimed offender in terms of Section 82 of the CrPC, he is not entitled to the relief of anticipatory bail.

15. In the present case, there is nothing in the status report to reveal that proclamation under Section 82 CrPC has been issued against the petitioner. As such, the legal position as explained in the case of *Prem Shankar Prasad (Supra)* is not applicable, to decline the grant of anticipatory bail to the petitioner.

16. Having regard to all the aforesaid facts and circumstances, particularly the conclusion drawn by the initial Special Investigation Team to be read with the postmortem report, chemical examiner report and the final opinion regarding the cause of death given by the board of doctors, as has been discussed above and also considering the fact that even the last SIT did not find any material against the petitioner to have given any beatings to the deceased or to have thrown him in the canal, but without commenting anything further on merits of the case, petition is allowed. It is directed that in the event of arrest of the petitioner, he shall be admitted to anticipatory bail on his furnishing bail bonds and surety bonds to the satisfaction of the Arresting Officer. However, the petitioner shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

13.03.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>