

CRM-M- 53966-2023 Neutral Citation No. 2024:PHHC:039511
CRM-M- 53337-2023 Neutral Citation No. 2024:PHHC:039516

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: March 06, 2024
Date of Decision: March 19, 2024

I. CRM-M-53966-2023
Gurmail Singh ...Petitioner
Versus
State of Punjab ...Respondent

II. CRM-M-53337-2023
Amritpal Singh @ Amrit Singh ...Petitioner
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: - Mr. P.S. Ahluwalia, Advocate for the petitioner
in CRM-M-53966-2023.
Mr. Karanjeet Singh Brar, Advocate for the petitioner
in CRM-M-53337-2023.
Mr. Sahil R. Bakshi, AAG, Punjab.

DEEPAK GUPTA, J.

In the two petitions titled above, both filed under Section 438 Cr.P.C., petitioners pray for grant of anticipatory bail in case FIR No.76 dated 12.06.2023 under Sections 307, 323 and 34 of IPC (Section 302 IPC added later on), registered at Police Station Barnala, District Barnala.

2. Separate status reports have been filed by the respondent state in both the cases.

3.1 The occurrence took place on 09.06.2023 at about 7 p.m., when Hardeep Singh @ Nodha accompanied by Arshdeep Singh (since deceased) were moving on a motorcycle. They halted at Hind Petrol Pump, village Cheema, where a car stopped there. **Harjeet Singh Malli @ Kala** along with **Jiwan Singh Malli** alighted from the car; whereas one unknown person was driving the said car. It is alleged that Harjeet Singh Malli caused injuries to Arshdeep Singh with iron rod. Hardeep Singh @ Nodha took injured Arshdeep Singh to the hospital, where during treatment, he expired on 16.06.2023. FIR was lodged on the statement of Hardeep Singh @ Nodha.

3.2 During investigation, complainant of the case – eye witness Hardeep Singh @ Nodha identified Baljinder Singh @ Nona to be the driver of the vehicle No.HR-26AW-3113 used in the crime, who had not come out of the car, but further, CCTV footage of the camera No.3 installed at Hind Petrol Pump, Cheema was obtained by S.I. Gurtar Singh, the then Investigating Officer of the case on 25.06.2023, in which the fighting with the deceased Arshdeep Singh was visible.

3.3 However, on the representation made by the family members of Jiwan Singh Malli and Baljinder Singh, the matter was enquired into by the S.P. (Investigation), who concluded that both theses persons i.e. Baljinder Singh @ Nona and Jagjiwan Singh @ Jiwan were innocent and got them discharged from trial court on 04.09.2023. Gurmail Singh

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(petitioner in CRM-M-53966-2023) was found to be the driver of the car used in the crime; whereas Amritpal Singh @ Amrit Singh (petitioner in CRM-M-53337-2023) was held to be the other assailant, who was accompanying Harjit Singh Malli @ Kala.

3.4 After completion of investigation, final report under Section 173 Cr.P.C. was filed against Harjit Singh Malli @ Kala by keeping Jagjiwan Singh @ Jiwan and Baljinder Singh @ Nona in column No.2 of the challan.

4.1 Seeking anticipatory bail for the petitioners, Learned counsels for both petitioners have drawn attention towards the fact that the inquiry conducted by SP (investigation), has been assailed by the complainant-eye witness, namely, Hardeep Singh @ Nodha by filing a petition bearing No.CRM-M-50000-2023 (copy Annexure P-8) on various grounds including the fact that he was not joined in the inquiry, despite being the eye witness; that the CCTV footage of the Hind Petrol Pump showed Harjit Singh Malli @ Kala and Jiwan Singh Malli coming in the Skoda car and attacking the deceased with iron rod. Learned counsels further points out that during investigation, said eye witness-complainant duly identified Baljinder Singh to be the driver of the car and the said fact was even admitted by the main assailant Harjit Singh Malli in his disclosure statement. Learned counsels for the petitioners have also pointed out that much prior to the occurrence, Arshdeep Singh-

deceased had made a complaint dated 14.10.2021 (Annexure P-9) alleging threat to his life on the part of Nona Singh S/o Makhan Singh, Jeevan Singh S/o not known and 7-8 other unknown persons.

4.2 Learned counsel for the petitioner – Gurmail Singh contends that in order to declare Baljinder Singh @ Nona as innocent, petitioner has been made a scapegoat by relying upon the statements of related witnesses of Baljinder Singh @ Nona and Jagjiwan Singh @ Jiwan; and that petitioner has already joined the investigation in compliance of the order dated 03.11.2023.

4.3 On behalf of petitioner – Amritpal Singh @ Amrit Singh, it is contended that he was neither named in the FIR nor any of the eye witnesses of the occurrence implicated him in the occurrence. Since beginning, it has been a consistent stand of the eye witness, namely Hardeep Singh @ Nodha that it is Harjit Singh Malli @ Kala, who alongwith Jagjiwan Singh @ Jiwan had alighted from the car and had assaulted the deceased. Learned counsel for the petitioner has raised a similar contention to the effect that in order to save Jagjiwan Singh @ Jiwan, petitioner has been made a scapegoat by the S.P. (Investigation) by relying upon the statements of witnesses, who were not present at the spot and rather, they were witnesses related to main accused Jagjiwan Singh @ Jiwan and Baljinder Singh @ Nona. Learned counsel prays for granting the benefit of anticipatory bail.

5. Learned State counsel has opposed both the petitions by submitting that names of two petitioners surfaced during inquiry conducted by S.P. (Investigation); that petitioner – Gurmail Singh was the driver of vehicle, in which assailants had come; whereas petitioner Amritpal Singh @ Amrit Singh was found to be the person, who was accompanying the main assailant Harjit Singh Malli @ Kala. Learned State counsel submits that in these circumstances, interrogation of both the petitioners will be necessary and even otherwise, having regard to the gravity of the offence, none of the petitioners deserve to be given the benefit of anticipatory bail. Prayer is made for rejecting the bail petitions.

6. I have considered submissions of both the sides and have appraised the record.

7. It is consistent stand of complainant Hardeep Singh @ Nodha, who is the eye witness of the entire occurrence that it is Harjit Singh Malli @ Kala and Jagjiwan Singh @ Jiwan, who had alighted from the car and had assaulted Arshdeep Singh. Although at the time of lodging of the FIR, he could not name the person, who was driving the car, in which assailants had come, but when the main assailant Harjit Singh Malli @ Kala was arrested along with Jagjiwan Singh @ Jiwan, they nominated Baljinder Singh @ Nona to be the driver of the car, in which they had come. Complainant of the case Hardeep Singh @ Nodha also duly identified Baljinder Singh @ Nona to be the driver of the

vehicle. These facts are duly recorded in the final report under Section 173 Cr.P.C. (Annexure P7 in CRM-M-53966-2023).

8. However, the line of the investigation was changed, the moment, representations were made by the mother of Jagjiwan Singh @ Jiwan and brother of Baljinder Singh @ Nona alleging their false implication. Inquiry was then conducted by S.P. (Investigation), who relied upon the CCTV footage of the shop of father of Jagjiwan Singh @ Jiwan and statements of some related witnesses including Bhola Singh, the father of Jagjiwan Singh @ Jiwan, so as to declare said Jagjiwan Singh @ Jiwan and Baljinder Singh @ Nona as innocent and replaced them with the present two petitioners.

9. On 3.11.2024, after noticing the contentions of Ld. Counsel for the petitioner Gurmail Singh, this court had adjourned the matter to 18.01.2024 for filing status report and directed the state to specify the following points:-

- (i) What is the basis of inquiry so as to implicate the petitioner because as per eye witness account, it is Baljinder Singh, who was driving the car in which the assailants had come.
- (ii) Whether the CCTV footage of the place of occurrence has been taken into possession and if so whether the identity of the petitioner is established in that CCTV footage.
- (iii) Since the occurrence took place on 09.06.2023 and Arshdeep expired on 16.06.2023, whether he made any statement prior to his death after the occurrence; or whether the said deceased had made any statement before the police after his earlier complaint (Annexure P-9).

10. The reply to the above queries has been answered by respondent-State in its status report, as under:-

“The Para-wise reply is submitted as under:

i) The present FIR was registered against Harjit Singh Malli @ Kala, Jiwan Singh and un-known driver on the basis of statement of Hardeep Singh @ Naudha. During investigation on 22.06.2023 Hardeep Singh @ Naudha made supplementary statement before the I.O that the name of driver of vehicle No. HR 26AW 3113 used in the crime is Baljinder Singh @ Nona, who did not come out from the car. On the basis of which, Baljinder Singh @ Nona was nominated as accused in this case. Further above said Baljinder Singh was identified by Hardeep Singh @ Naudha (complainant) that this is the person who was the driver of said but did not come out of the car at the time of incident. Accused Baljinder Singh @ Nona was arrested on 10.07.2023. However, it is pertinent to mention that during ongoing investigation, an application No.2076/VP dated 23.06.2023 was submitted by Sukhwinder Kaur w/o Gurjant Singh and another application No. 2355/VP dated 13.07.23 was submitted by Balwinder Singh s/o Makhan Singh regarding innocence of Jagjivan Singh @ Jiwan Singh Malli and Baljinder Singh @ Nona respectively. Inquiry/investigation into the said applications was conducted by S.P., Investigation, Barnala and after conducting thorough and deep inquiry/investigation, he submitted report dated 25.08.23 that during inquiry/investigation, statements of Paramjit Kaur, Avtar Singh, Sadhu Singh, Balvir Singh, Gurjant Singh, Jatinder Singh, Bhola Singh Gursewak Singh and Sukhwinder Singh were recorded. Bhola Singh presented a video from 06.30 PM to 06.50 PM on 09.06.23 converted in pen drive, call location of mobile phone No. 79864-68036 on 09.06.23 of Hardeep Singh @ Nodha complainant, mobile No.88475-88424 of accused Harjit Singh, mobile No. 76969-23473 of Jagjiwan Singh, mobile No.9793-01108 of Baljinder Singh @ Nona, mobile No.98724-56826 of Amrit Singh and mobile phone

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No.85282-11805 of Gurmail Singh @ Gola. The inquiry/investigating Officer mentioned that from the statements, call details obtained and thorough investigation, it has been found that on dated 09.06.2023 at around 7.00 PM when the incident was occurred at Hind Petrol Pump Cheema, at that time, Baljinder Singh @ Nona alongwith Gursewak Singh s/o Darshan Singh resident of Gulab Singh Wala was verified to be in the area of Bhadaur, which fact was supported by the statement of Gursewak Singh. That's why, the call location of mobile phone No.97793-01108 of Baljinder Singh has come to be of village Nainowal on dated 09.06.2023 at around 07.08 PM in Barnala Road, Bhadaur, at around 07.18 PM to 07.24 PM from village Nainowal, whereas, the location of the mobile phone number 79864- 68036 of complainant Hardeep Singh was found to be of village Cheema on dated 09.06.2023 at about 7.12/13 PM. From which it is clear that complainant Hardeep Singh and Baljinder Singh @ Nona were not together at the time of said incident. From the statement of Bhola Singh s/o Gurdev Singh and Sukhwinder Singh s/o Jeet Singh and videos produced by Bhola Singh and on its examination, it has been found that accused Harjit Singh @ Kala along-with two more young persons were appeared in the video, this video is of dated 09.06.2023 at about 6.30 PM to 6.50 PM, according to the statements, accused Harjit Singh @ Kala was found alongwith Amrit Singh s/o Gurmail Singh and Gurmail Singh @Gola s/o Sudagar Singh. According to the video and statements, Harjit Singh @ Kala, Amrit Singh and Gurmail Singh @ Gola, they are seen leaving in a car on 09.06.2023 at about 6.48 PM, and the name of person sitting to be stated on the driver seat is Gurmail Singh @ Gola (present petitioner) and the name of person sitting on the back seat of car is Amrit Singh. Similarly, on dated 09.06.2023 at about 7.00 PM, the video recorded in the CCTV cameras of Hind Petrol Pump Cheema and the statements, it has been found that on dated 09.06.2023 at around 6.48 PM, the three young men ride in the car and walk from the side of Pakho Kanchiya,

the time of the car reaching at Hind Petrol Pump is around 19/07.02 PM, from which it is evident that on dated 09.06.2023 at around 6.48 PM, accused Harjit Singh @ Kala alongwith Gurmail Singh @ Gola and Amrit Singh above reached at Hind Petrol Pump Cheema at about 07.20 PM from Pakho Kanchian because the distance from Pakho Kanchiya to Hind Petrol Pump Cheema is around 10 minutes. The inquiry/investigating Officer further mentioned that before the time of incident, at the time of incident and after the time of incident accused Harjit Singh @ Kala, Amrit Singh and Gurmail Singh @ Gola were together, whose identity comes from the statement of Bhola Singh s/o Gurdev Singh and Sukhwinder Singh s/o Jeet Singh r/o Sehna.

From the entirety of facts emerged during inquiry/investigation, call locations and examination of video produced by way of pendrive, Jagjiwan Singh @ Jiwan and Baljinder Singh @ Nona were not proved to be at Hind Petrol Pump Cheema, rather Harjit Singh @Kala, Amrit Singh Gurmail Singh @ Gola are found to be together at Hind Petrol Pump, Cheema at the time of incident. However, names of Jagjiwan Singh @ Jiwan and Baljinder Singh @ Nona were got mentioned by Hardeep Singh complainant due to rivalry in the village. Hence on the basis of investigation and recommendation made by the S.P. Investigation, Barnala, Baljinder Singh @ Nona and Jagjiwan Singh @ Jiwan were declared as innocent and they were got discharged in this case and Gurmail Singh (present petitioner) and Amrit Singh who are found as actual accused, were nominated as accused in this case.

ii) Regarding point No.(ii) it is submitted that the CCTV Footage of camera No.3 installed at the Hind Petrol Pump, Cheema was taken into possession by S.I. Gurtar Singh, Investigating Officer and a fighting is seen in this footage. However, the examination of pendrive in which video of CCTV camera, installed at the shop of Bhola Singh (father of accused Harjit Singh) in village Pakho Kanchian is converted, revealed that Harjit Singh @ Kala, Amrit Singh and Gurmail Singh @ Gola, they

are seen leaving in a car on 09.06.2023 at about 6.48 PM from the shop of Bhola Singh (father of accused Harjit Singh) at village Pakho Panchian and the name of person who wearing Pagri sitting on the driver seat is Gurmail Singh @ Gola (present petitioner) and the name of person sitting on the back seat of car is Amrit Singh. Similarly, on dated 09.06.2023 at about 7.00 PM, the video recorded in the CCTV cameras of Hind Petrol Pump Cheema and the statements, it has been found that on dated 09.06.2023 at around 6.48 PM, the three young men ride in the car and walk from the side of Pakho Kanchian, the time of the car reaching at Hind Petrol Pump is around 07.02 PM, from which it is evident that on dated 09.06.2023 at around 6.48 PM, accused Harjit Singh @ Kala alongwith Gurmail Singh @ Gola and Amrit Singh above reached at Hind Petrol Pump Cheema at about 07.02.PM from Pakho Kanchian because the distance from Pakho Kanchiya to Hind Petrol Pump Cheema is around 10 minutes.

iii) Regarding point No.(iii) it is submitted that the occurrence took place on 09.06.2023 and Arshdeep Singh expired on 16.06.2023. From 09.06.2023 to 16.06.2023, Arshdeep Singh remained unconscious/unfit to give statement. That's why his statement could not be recorded. It is further submitted that in order to associate in the inquiry into the application No.2930/VP dated 16.10.2021 and application No. 3004/VP dated 22.10.2021 moved by Arshdeep Singh, he was issued three notices i.e. Notice dated 22.10.2021 to come present on 23.10.2021 then notice dated 24.10.2021 to come present on 25.10.2021 and then notice dated 29.10.2021 to come present on 30.10.2021, but he refused to receive or note down all above said notices. Also he did not turn up to join in the inquiry. That's why his statement could not be recorded.

As per the detailed facts submitted above, the answering deponent is filing the present status report in compliance with order dated in compliance with order dated 03.11.2023 for the kind consideration of this Hon'ble Court.”

11. The aforesaid reply support the contentions of the petitioners to the effect that instead of relying upon the eye witness account of complainant Hardeep Singh @ Nodha and the CCTV footage of camera No.3 of the place of crime, the S.P. (Investigation) preferred to rely upon CCTV footage of shop of the father of one of the main accused – Jagjiwan Singh @ Jiwan, which was quite prior to the time of occurrence, so as to declare him innocent. Not only this, said S.P. (Investigation) preferred to rely upon the statements of persons, who were related to accused – Jagjiwan Singh @ Jiwan and Baljinder Singh @ Nona.

12. As has already been noticed that the said inquiry report of SP (Investigation) has already been challenged by the complainant of the case Hardeep Singh @ Nodha by filing CRM-M-50000-2023 (Annexure P-8) on various grounds, including the fact that complainant was not even joined in the inquiry and that CCTV footage of the place of occurrence was not considered. Since the inquiry report is already under challenge in CRM-M-50000-2023, this Court would not like to make any further comments on the said inquiry report.

13. Having regard to all the facts and circumstances as have been noted above, but without commenting anything on the merits of the case, both the petitions are allowed.

14. The order dated 03.11.2023 passed in CRM-M-53966-2023

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and order dated 06.11.2023 passed in CRM-M-533378-2023, whereby the two petitioners were granted interim anticipatory bail, are hereby made absolute. However, they shall continue to join investigation, if and so required by the Investigating Officer.

Photocopy of this order be placed on the connected case files.

March 19, 2024	(DEEPAK GUPTA)
Sarita	JUDGE
Whether reasoned/speaking:	Yes
Whether reportable:	No