



CRM-M-11692-2025

1

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

144

**CRM-M-11692-2025
Decided on :19.05.2025**

Sukhwinder Singh and others

. . . Petitioner(s)

Versus

State of Punjab and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. G.B.S. Dhillon, Advocate for the petitioner.

Mr. Neeraj Madaan, Sr. DAG, Punjab.

Mr. Karamjit Singh Brar, Advocate
for respondent No.2-complainant.

SANJAY VASHISTH, J. (Oral)

1. Petitioners namely; (i) Sukhwinder Singh, (ii) Amrik Singh, (iii) Gurwinder Singh and (iv) Akashdeep Singh, have challenged the order dated 25.11.2024 (Annexure P-7) passed by the learned Additional Sessions Judge, Ferozepur (hereinafter referred to as "the trial Court"). By this order, the petitioners have been summoned as additional accused under Section 358 of the Bharatiya Nyaya Sanhita (BNSS) in connection with proceedings arising out of FIR No. 0107 dated 18.10.2019, registered under Sections 302, 324, 323, 148, and 149 of the Indian Penal Code (IPC) at Police Station Zira, District Ferozepur.

2. At the very outset, learned counsel for the petitioners submits that he does not wish to press the present petition insofar as it pertains to petitioner No.2 – Amrik Singh and petitioner No.4 – Akashdeep Singh.



CRM-M-11692-2025

2

Accordingly, the petition qua petitioner No.2 – Amrik Singh and petitioner No.4 – Akashdeep Singh stands disposed of as not pressed.

3. The occurrence took place on **17.10.2019**, and consequently, the aforementioned **FIR No. 0107 dated 18.10.2019** was registered against a total of **nine accused**, namely: (i) Akashdeep Singh, (ii)Bohar Singh, (iii) Mandeep Singh, (iv) Amrik Singh, (v) Sukhwinder Singh @ Sonu, (vi) Parkash Singh, (vii) Joginder Singh, (viii) Bittu, (ix) Narinder Singh. Statement of the complainant, Inderjeet Singh, was recorded as PW-2, and subsequently, on 14.08.2024, the prosecution moved an application under Section 538 of the Bharatiya Nyaya Sanhita (BNSS) seeking summoning of the petitioners, including petitioner Nos. 2 and 4, with respect to whom the present petition already stands disposed of as not pressed.

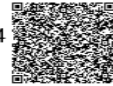
Statement recorded by the complainant, Inderjeet Singh, before the Court on **20.07.2024**, is reproduced as under:

“PW2

Inderjit Singh son of S. Sukhwinder Singh Rio Village Shah Bakar, Tehsil Zira, District Ferozepur on S.A. (Now produced from Central Jail Ferozepur)

Stated that I am well conversant with English Language and I have no objection if my statement be recorded in this language.

I was doing the work of agriculture. On 17.10.2019, at about 2.00 PM, I along with my friends have gone for paying obeisance at Gurudwara Baba Budha Sahib on 120 car. After reaching at Gurudwara Sahib, I recorded a video of Gurudwara Sahib and posted as a status on my whatsapp. I along with my friends returned at about 6-7 PM and my friends dropped me near minor bridge on Zira Road. When I alighted from the car, I had seen Akashdeep Singh son of Narinder Singh along with one sword, I ignored him and started walking towards my house. Akashdeep Singh started following me. When I reached near the house of Hardeep Singh son of Harnam Singh, then I saw Bohar Singh son of Janga Singh was standing along with rod in his hand. When I crossed Bohar Singh, he gave a blow with his iron



rod, which hit on my back near shoulder. When he tried to give another blow, I caught hold of the rod and a scuffle took place between me and Bohar Singh. In the meanwhile Mandeep Singh son of Parkash Singh armed with Khanda, Sukhwinder Singh @ Sonu son of Darshan Singh armed with toka, Amrik Singh son of Dyal Singh armed with toka like thing, Parkash Singh and Joginder Singh both sons of Janga Singh both armed with Gandasi, Bittu son of Joginder Singh armed with Kirch, Narinder Singh son of Janga Singh empty handed came there from the side of their street at the spot. Joginder Singh son of Janga Singh gave blow of gandasi on my person, which hit on the left thigh. In the meanwhile my father Sukhwinder Singh arrived at the spot. Amrik Singh on seeing my father raised lalkara that he should be caught also and since it is their government, so he will not let anything happen to them. On this Narinder Singh caught hold of my father and thrown him on gurri. Bohar Singh son of Janga Singh gave the blow of iron rod on the head of my father. Mandeep Singh son of Parkash Singh and Akashdeep Singh son of Narinder Singh gave a number of blows with their sword and khanda on the legs of my father and due to said blows my father's legs almost get chopped off and the remaining accused started giving beatings to me and father. After some time, the accused along with their weapons had ran away from the spot. In the meantime Gurpreet Singh son of Nishan Singh my cousin reached at the spot and took me to Civil Hospital Makhu and my father was taken to Civil Hospital Moga and my father Sukhwinder Singh expired in Civil Hospital Moga. The motive behind the occurrence was that earlier also an altercation took place between the accused side and our side, but the matter was resolved. however, the accused kept the grudge and after a conspiracy in connivance with each other, they have caused Injuries to me and my Lather, due to which my father had expired.

On 18.10.2019, I got recorded my statement Ex. PW2/A to the police, which was read over and explained to me and I put my signatures on the same at point A. I identify accused Bohar Singh and Joginder Singh present in the Court, however, accused Narinder Singh has since expired. I have not seen accused Mandeep Singh, Akashdeep Singh, Amrik Singh, Sukhwinder Singh @ Sonu, Parkash and Gurwinder Singh as they have not been challaned by the police despite their presence and causing of injuries to us.

At this stage, APP for the State requested to move an application 4/s 358 BNS (319 Cr.P.C) qua aforementioned accused. Request heard and allowed.

Further examination in chief is deferred.

R.O & A.C.

(Hardip Singh)

ASJ/FZR/20.07.2024."

4. Upon filing of the aforementioned application, learned trial Court passed the impugned order dated 25.11.2024, whereby the petitioners

**CRM-M-11692-2025****4**

were summoned. As per the post-mortem report, eleven injuries were observed on the body of the deceased, out of which five were incised wounds, which were found to be corresponding to the injuries allegedly assigned to the respective accused.

5. Learned counsel for petitioner Nos. 1 and 3 submits that the summoning order dated 25.11.2024, passed by the learned trial Court under Section 358 of the Bharatiya Nyaya Sanhita (BNSS) (corresponding to Section 319 Cr.P.C.), is contrary to the settled principles of law. It is contended that no specific role has been attributed to the petitioners either in the FIR or in the statement made on oath by the complainant before the Court, although they are alleged to have been armed with weapons.

Counsel further submits that petitioner No.3, though stated to have been armed with a kirch (knife), has not been alleged to have caused any injury. It is argued that, had there been any intention on his part to commit murder, he would have actively participated in the incident. The absence of any injury attributed to him renders the prosecution's version doubtful, raising serious concerns as to whether the narrative is truthful or concocted to falsely implicate additional accused.

A similar submission is made with respect to petitioner No.1, who is alleged to have been armed with a toka, but to whom no injury has been attributed either. This, too, casts doubt on the veracity of the prosecution's case.



CRM-M-11692-2025

5

In support of his submissions, Mr. G.B.S. Dhillon, learned counsel for the petitioners, places reliance upon the following judgments:

- “1. Hardeep Singh Vs. State of Punjab, 2014(1) RCR (Crl.) 623, Law Finder Doc Id # 514454”*
- 2. Chander Singh Vs. State of Haryana, 2023(1) Law Herald 806;*
- 3. Dheera Ram Vs. State of Haryana others, 2023(4) RCR (Crl.) 526;*
- 4. Rajesh Kumar and others Vs. State of Haryana and another, 2024 NCPHHC, 68928 ; and*
- 5. Sagar Vs. State of U.P., 2022(2) RCR (Crl.) 344”*

Referring to the judgment of Hon’ble Apex Court in **Hardeep Singh’s case (supra)**, the basic principles governing the exercise of power under Section 319 Cr.P.C. (now Section 358 BNSS) were laid down, counsel submits that, in the light of said principles, the summoning order qua petitioner Nos. 1 and 3 is legally unsustainable and deserves to be set aside. Consequently, the application under Section 358 of the BNSS, to the extent it pertains to the said petitioners, is liable to be dismissed.

6. On the other hand, learned State counsel as well as counsel appearing on behalf of the complainant submit that the submissions advanced by learned counsel for petitioner Nos. 1 and 3 cannot be accorded any weight at this preliminary stage. It is contended that such arguments are, a matter for consideration at the conclusion of the trial, when the **entire evidence**, including that of the defence, and that too led by the summoned accused, would be available before the learned trial Court. Therefore, the impugned summoning order does not warrant interference at this stage.



CRM-M-11692-2025

6

7. I have heard the learned counsel for the parties and have perused the material available on record, which is already before this Court.

8. Undoubtedly, as per the latest judgment of the Hon'ble Apex Court, wherein several earlier decisions of the Supreme Court and various High Courts were duly considered, the power of the Court under Section 319 Cr.P.C. (now Section 358 BNSS) is not to be exercised merely on the basis of a prima facie, case against the proposed accused. Rather, a higher threshold of evidence is required, stronger than a mere probability of complicity.

The Hon'ble Supreme Court has clearly held that, unlike at the stage of framing of charges where a prima facie case suffices, the standard for invoking Section 319 Cr.P.C. demands satisfaction that the evidence, if left unrebutted, is such that it is likely to lead to a conviction.

In this context, the Apex Court had specifically framed a question for determination, which is reproduced hereinbelow for reference:

“ What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319(1)Cr.P.C. can be exercised, only if the Court is satisfied that the accused summoned will in all likelihood convicted.”

Answering the aforementioned question, the Constitution Bench of the Hon'ble Supreme Court, in *Hardeep Singh's case (supra)* made the following observations in paragraphs 97, 98, and 99:

“97. In Palanisamy Gounder & Anr. v. State, represented by Inspector of Police, 2006(2) RCR (Criminal) 235 : (2005) 12 SCC 327, this Court deprecated the practice of invoking the



power under Section 319 Cr.P.C. just to conduct a fishing inquiry, as in that case, the trial court exercised that power just to find out the real truth, though there was no valid ground to proceed against the person summoned by the court.

98. *Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.*

99. *Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."*

When no specific role is attributed to the proposed accused, this Court, in the case of *Chander Singh* (supra), has also taken a similar view. In paragraphs 8 and 9 of the judgment, the Court observed as under:

"8. *Applying the test in the present case, no further evidence than what was available during investigation and was relied upon by the Investigating Agency, has been brought to the notice of this Court nor there was any before the trial Court. Only when a strong and cogent evidence is led against a person, that such power under Section 319 Cr.P.C. can be exercised. It is not to be exercised in a casual manner. The discretion granted under Section 319 Cr.P.C. has to be exercised very sparingly and with caution and only when the court is satisfied that some offence has been committed by such person. No doubt, the complainant had specifically named respondent Nos. 2 to 7 (in CRR-2874-2018) and respondents No. 2 and 3 (in CRR-2288-2019) in the FIR and his presence cannot be doubted. However, the petitioner has not attributed any specific role to respondents Nos. 2 to 7 (in CRR-*



2874-2018) and respondents No. 2 and 3 (in CRR-2288-2019). Merely because the private respondents had been named in the FIR and in the statement recorded by the complainant before the trial court, would not be a ground to invoke the powers under Section 319 Cr.P.C. What is required is that the material, which is brought before the Court, must be of such a nature as would satisfy the Court that it would reasonably lead to conviction of the person sought to be summoned. The trial Court has rightly held that there is no justification to exercise the powers under Section 319 Cr.P.C.

9. As a result of above discussion, no fault can be found with the impugned order dated 09.08.2018 passed by the learned Addl. Sessions Judge, Palwal, dismissing the application under Section 319 Cr.P.C. filed by the petitioner, for summoning respondents Nos. 2 to 7 (in CRR-2874-2018) and respondents No. 2 and 3 (in CRR-2288-2019) as additional accused. Accordingly, the impugned order dated 09.08.2018 is upheld and both the revision petitions are dismissed.”

9. The ratio of law laid down on the issue under consideration has also been reaffirmed by the Hon’ble Single Bench of this Court in its order dated 27.03.2023 passed in the case of *Dheera Ram* (supra). In that judgment, the Court took note of the findings recorded by the Hon’ble Apex Court in *Hardeep Singh* (supra), and reiterated that if the test laid down therein is applied, the Court must refrain from exercising its power under Section 319 Cr.P.C. (now Section 358 BNSS) in a mechanical or routine manner, especially in the absence of sufficient material. The power is to be exercised sparingly and only in exceptional circumstances, where the evidence on record clearly justifies such invocation.

10. Further, reliance placed by learned counsel for the petitioners on the case of ***Rajesh Kumar and others*** (supra) is also on similar legal footing, reinforcing the principle that mere presence or suspicion is not sufficient, there must be cogent and credible evidence indicating the involvement of the proposed accused to the extent that, if unrebutted, it would likely lead to conviction.



11. At the preliminary hearing held on 30.04.2025, upon recording the submissions of the parties, this Court passed the following order:

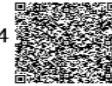
- “1. Through present petition filed u/s 528 of BNSS, 2023, petitioners are seeking quashing of order dated 25.11.2024 (Annexure P-7), passed by learned Additional Sessions Judge, Ferozepur, whereby, petitioners have been summoned as accused, on an application filed u/s 358 of BNSS, 2023, in case FIR No.107, dated 18.10.2019, u/s 302/324/323/148/149 IPC, registered at P.S. Zira, District Ferozepur (Annexure P-2).
2. Claimant – respondent No.2 in the present case is ‘Inderjit Singh’, who himself claims to be injured one. Occurrence took place on 17.10.2019 at 2:00 P.M., and consequently, FIR No.107, dated 18.10.2019, lodged u/s 302/324/323/148/149 IPC, registered at P.S. Zira, District Ferozepur, wherein, total 9 accused, namely; (i) Akashdeep Singh, (ii) Bohar Singh, (iii) Mandeep Singh, (iv) Amrik Singh, (v) Sukhwinder Singh @ Sonu, (vi) Prakash Singh, (vii) Joginder Singh, (viii) Bittu @ Gurwinder Singh, & (ix) Narinder Singh.

The details of roles attributed to all the accused-persons, in the FIR, are mentioned here-under:-

Sr. No.	Name	Role Attributed
i.	Akashdeep Singh	Gave a Kirpan (sword) blow on legs of deceased and it get chopped
ii.	Sukhwinder Singh @ Sonu	Armed with Toka, but not attributed any injury.
iii.	Bohar Singh	Armed with iron rod and given iron rod blow on the left side of the back of the complainant and also on the head of the deceased with iron rod.
iv.	Mandeep Singh	Armed with Khanda and has given blow on the legs of the deceased and crushed them.
v.	Amrik Singh	Gave lalkara.
vi.	Prakash Singh	Armed with Gandasi, but not attributed any specific injury.
vii.	Joginder Singh	Gave Gandasi blow on left thigh of the injured/complainant.
viii.	Bittu @ Gurwinder	Though armed with Kirch, but not attributed any specific role.
ix.	Narinder Singh	Though not armed, but got hold the deceased and through him on rurri.

During the course of investigation, petitioners herein along with one Parkash, were found innocent, and therefore, were placed in column No.2 (which is now column No.12).

3. At the time of recording of the statements of the prosecution witnesses, i.e., injured/complainant – Inderjit Singh, the version given in the FIR was reiterated, and accordingly,



aforementioned five accused were summoned by the trial Court after observing that there are total 11 injuries, which were inflicted upon the deceased, and 5 out of them were incised wounds.

4. *Learned counsel argues that the learned Trial Court has not discussed any reason for summoning of all the four petitioners herein, rather, as per the law laid down by the Hon'ble Apex Court in **Hardeep Singh v. State of Punjab and others, 2014(3) SCC 92**, it is mandated for the Court before exercising its power under Section 319 Cr.P.C., it is required to conclude the likelihood of the final decision qua the summoned accused, and in case, the said person is required to be summoned as accused, the scale of satisfaction of the Court, should be higher than the prima facie case, which is there for the purpose of framing of charges.*

5. *Learned counsel, on instructions, also argues that two of the summoned accused, i.e., Sukhwinder Singh and Gurwinder Singh @ Bittu (petitioners No.1 and 3, respectively), are though attributed to be armed with 'Tokka' and 'Kirch' respectively, but admittedly, they have not been attributed any specific injury having been caused to any person of the complainant party. Therefore, the role of both of these persons, i.e., petitioners No.1 and 3, respectively, if taken on its face value, as assigned in the FIR and then in the statement before the trial Court, does not inspire confidence about their involvement beyond the shadow of doubt, as even no lalkara or act of exhorting any other person is mentioned.*

6. *Notice of motion.*

7. *On asking of the Court, Mr. Amandeep Singh, DAG, Punjab, who is present in the Court, accepts notice for respondent No.1 – State and seeks time to get instructions and to file reply, if any.*

8. *At this stage, Mr. Karanjeet Singh Brar, Advocate, who is already appearing on behalf of respondent No.2 (complainant), accepts notice on behalf of respondent No.2.*

Requisite copies of the paper book have already been supplied to learned State counsel as well as learned counsel for respondent No.2.

9. *Learned State counsel shall file a comprehensive status report by detailing therein the reasons assigned by the Investigating Officer qua the accused Sukhwinder Singh and Gurwinder Singh (petitioners No.1 and 3 herein), and as to whether they were joined during investigation or not, and if joined, what kind of weapon(s) were recovered at their instances.*

10. *List again on 19.05.2025.*

To be shown in the urgent list. ”

12. Looking at the evidence reproduced hereinabove and applying the legal principles laid down by the Hon'ble Apex Court in the Constitution Bench judgment of **Hardeep Singh (supra)**, it is evident that the Court

**CRM-M-11692-2025****11**

is unable to record a finding that, on the basis of the evidence available before it, there are reasonable grounds satisfying that, if such evidence goes un rebutted, there is every likelihood of the conviction of the summoned accused—petitioners No. 1 and 3."

Accordingly, the impugned order dated 25.11.2024 is hereby set aside qua petitioners No. 1 and 3 only. Resultantly, the application under Section 358 of BNSS stands dismissed qua the said petitioners. Petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

19.05.2025*Rashmi*

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*