

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-13881-2025
Reserved on: 01.05.2025
Pronounced on: 16.05.2025

Kabal Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Abhishek Singh, Advocate,
for the petitioner.

Mr. Vivek Sunak, AAG, Punjab.

Mr. Tejinderbir Singh, Advocate
for the complainant. (Through V.C.)

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
146	09.09.2022	Mallanwala, District Ferozepur, Punjab	302, 307, 336, 447, 120-B, 148, 149 IPC and Sections 25, 27 of Arms Act (Sections 54, 59, 29 of Arms Act added lateron)

1. The petitioner, aged 73 years is in custody for commission of offence captioned above, has come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. In note (5) of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the status report filed by the State, which reads as follows:

“3. That in compliance of the order dated 19.03.2025, it is most respectfully submitted that FIR No.146 dated 09.09.2022 under Sections 302, 307, 336, 447, 120-B, 148, 149 IPC and 25/27/29 of the Arms Act was registered in Police Station Mallanwala on the statement of Pargat Singh son of Sulakhan Singh, resident of village Fatehgarh Sabhra, Mallanwala, Ferozepur against 1)Kabal Singh son of Hari Singh (present petitioner), 2) Jaswant Singh son of Kabal Singh, 3) Nishan Singh son of Kundan Singh, 4) Gurdev Singh alias Foji son of Santokh Singh, 5) Harbhajan Singh son of Santokh Singh, 6) Sukhdev Singh son of Santokh

Singh, 7) Malook Singh son of Harbans Singh, 8) Gursewak Singh son of Malook Singh, 9) Guravtar Singh son of Malook Singh, 10) Sardool Singh son of Harbans Singh, 11) Ranjit Singh son of Sardool Singh, 12) Palwinder Singh son of Bakhshish Singh, 13) Harpreet Singh son of Nishan Singh, 14) Jaswant Singh son of Joginder Singh, 15) Hardeep Singh son of Joginder Singh, 16) Arshdeep Singh son of Gurwinder Singh and three unknown persons, on the allegations that the complainant had a dispute regarding partition of land measuring 15 Killas with Kabal Singh (present petitioner) and others, which is pending in the court of SDM, Zira, which is being pursued by Harpreet Singh son of Nishan Singh, Jaswant Singh son of Joginder Singh, Hardeep Singh son of Joginder Singh and Arshdeep Singh son of Gurwinder Singh. On 08.09.2022, at about 12/12:30 p.m., complainant alongwith his brother Jaswant Singh was working in their fields. All of a sudden, they heard noise of gun shot fire and they saw that Gurdev Singh Fauji son of Santokh Singh and his brother Harbhajan Singh, Sukhdev Singh alongwith many people came on tractor and other vehicles and started ploughing Chari fodder sown over the land measuring 4 Kanal 8 Marla, which is in their (complainant's) possession. Gurdev Singh, Harbhajan Singh and Sukhdev Singh started firing from their rifles. Out of fear, complainant alongwith his brother Jaswant Singh rushed towards their house and on seeing them, Kabal Singh (present petitioner), his son Jaswant Singh and Nishan Singh son of Kundan Singh started raising Lalkaras. When they reached near their house, on hearing clamor, his (complainant's) son Balraj Singh, brother Balwinder Singh, nephew Gurjit Singh came forward to rescue them, whereupon Gurdev Singh Fauji armed with 315 rifle, Harbhajan Singh armed with 315 rifle, Sukhdev Singh armed with 12 bore gun, Malook Singh, Gursewak Singh armed with kirpans, Guravtar Singh son of Malook Singh, Sardool Singh son of Harbans Singh, Ranjit Singh son of Sardool Singh, Palwinder Singh son of Bakhshish Singh along with other 25/30 unidentified persons came there. Malook Singh raised Lalkara to kill all of them. Then, Gurdev Singh Fauji fired shot from his 315 bore rifle with the intention of killing his son Balraj Singh, which hit his right shoulder. Harbhajan Singh fired a shot from 315 bore rifle, which hit his brother Balwinder Singh. Gurdev Singh Fauji fired from his gun which hit left thigh of his nephew Gurjit Singh. Then, Sukhdev Singh fired shot from his 12 bore gun towards Gurjit Singh, which hit on left leg and right leg. Sukhdev Singh also fired shot towards his brother Jaswant Singh, the pallets of which hit on chest, face and forehead of Jaswant Singh. Then Sukhdev Singh fired another shot towards him (the complainant) which hit

his both legs. He raised an alarm, whereupon all the assailants fled away from the spot on their vehicles. Balraj Singh, Balwinder Singh, Jaswant Singh and Gurjit Singh were taken to Civil Hospital, Ferozepur, where Balraj Singh and Balwinder Singh were declared to be brought dead by the doctor, whereas Jaswant Singh and Gurjit Singh were referred to GGS Medical College and Hospital, Faridkot. The true copy of post mortem report of Balraj Singh is Annexure R-1. The true copy of post mortem report of Balwinder Singh is Annexure R-2.”

4. The petitioner’s counsel submits that the petitioner is 73 Years old and he suffered a severe back injury after suffering a fall in the jail and he was also granted the concession of Interim Bail by this Hon’ble Court for a period of 4 Weeks for medical treatment vide order dated 13.05.2024 (Annexure P-6), and the petitioner never misused the concession granted to him. He further submits that no injury is attributed to the petitioner, and he was also not armed with any weapon, however, it is alleged that he raised joint lalkaras with his son Jaswant Singh and one Nishan Singh S/o Kundan (Strangely even though identical role is attributed in the FIR, but Nishan Singh has been declared innocent and petitioner has been Challaned, which shows the arbitrary manner in which the investigation has been conducted on pick & choose basis). He submits that the present case is a case of version and cross version, hence the factum regarding which party is the actual aggressor of the present dispute is yet to be decided by the Ld. Trial Court, therefore further incarceration of the petitioner is neither required nor warranted. He further submits that the credibility of the version put forth by the Complainant side is highly doubtful, which is apparent from the fact that allegations were levelled against as many as 16 named accused persons in the FIR, however 11 out of 16 were found innocent during investigation. He further submits that though it is alleged by the complainant party that the dispute regarding partition of land is with the petitioner and others, however the motive is attributed to Malook Singh & Gurdev Singh and very strangely even Malook Singh has been declared innocent during investigation.

5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

6. The State’s counsel opposes bail and refers to the status report.

7. It would be appropriate to refer to the following portions of the reply, which read as follows:

“8. That the challan against the present petitioner, Jaswant Singh, Gurdev Singh Fauji, Harbhajan Singh, Sukhdev Singh was presented in the Ld. Trial Court. Supplementary challan against Hira Singh accused was

presented on 30.01.2024. Charges under section 302, 307, 336, 447, 120-B, 148, 149 IPC and 25, 27 Arms Act (sections 54, 59, 29 Arms Act added lateron) were framed against them on 20.07.2024. There are total 32 witnesses, out of which PW-1 Dr. Manpreet, Medical Officer has since been examined. Now the case is fixed for 12.05.2025 for arguments on the application u/s 348 read with section 94 of BNSS 2023.

A) Medico-Legal Certificate/PMR of the deceased.

Copies of post mortem reports are enclosed as Annexure R-1 and R-2.

B) Surviving victim's current medical condition.

Jaswant Singh and Gurjit Singh were injured in this case and they have already discharged from the hospital and are medically fit.

C) The time for which the surviving victim(s) remained in the hospital.

From 08.09.2022 to 16.09.2022

D) Weapon(s) used.

The present petitioner was not armed with any weapon at the time of occurrence and he only raised lalkara. However the other accused persons armed with rifles.

E) Weapon and injuries attributed to the petitioner.

No injury is attributed to the petitioner and he only raised lalkara, which instigate the other co-accused to attack the complainant party.

F) The evidence based on which the petitioner was arraigned as an accused.

Sworn statement of complainant, who specifically named the present petitioner participated in the occurrence.

G) The evidence against the petitioner.

Statement of complainant.

H) The role of the petitioner.

At the time of occurrence, the petitioner raised lalkara, which instigate the other co-accused, who committed murder of Balraj Singh and Balwinder Singh and caused injuries Jaswant Singh and Gurjit Singh received injuries. Thus the petitioner has committed heinous crime.”

REASONING:

8. Although, there is prima facie evidence connecting the petitioner with the common object to cause injuries to the injured and murder of the deceased and further that the arguments on merits raised by the petitioner’s counsel are contrary to the evidence collected so far. Be that as it may, the petitioner is entitled to bail solely on the ground of his age being closer to 75 years. This Court had granted bail to an older person, vide order dated 19.07.2022 passed in ***CRM-M-26522-2022, Habib Versus State of Haryana***, by observing in the following terms:

“7. The petitioner had stated that he was not absconding from justice but he was afraid of catching Corona virus. Given the impact of Covid-19 pandemic particularly on the elderly, it would not be appropriate to disbelief his submission entirely and to continue to believe that the petitioner, if released on bail, would again abscond and evade trial.

8. The weapon of offence attributed to the petitioner, who is an octogenarian, is a lathi. It is a matter of common knowledge that older people often make use of lathis/dandas in their routine life to aid their movements. Increasing age presents itself with complications such as postural deformities and decreased sensory input. Use of stick as an external support increases physical and psychological abilities. A large number of elders are dependent entirely on these sticks for balance and stability. Apart from the assistance in walking, these sticks also help them to dispel or protect themselves against stray, rabid or dangerous animals. In the present case, when the alleged offence was committed the petitioner was of the age where it can be safely assumed that he was in possession of a lathi as a means to support his body as opposed to a weapon intended to kill a person. Further, as per the status report, the other co-accused were armed with farsa, axe and iron rods. The petitioner is only attributed a danda blow which, in the light of the medical report, cannot be reasonably presumed to have caused the death of the victim.

9. As per the latest World Development Indicators, the life expectancy at birth for an Indian resident averages 69.887 years. Prison Statistics India 2020, compiled by the National Crime Records Bureau (Ministry of Home Affairs), Government of India, reveals that very few States provide special treatment or facilities for old age prisoners. The purpose of sentencing is two-fold: deterrence and retribution; and is intended to send a strong message to the people not to violate the law enacted by the State, simultaneously consoling and assuring the victims of the justice system put in place by the State and preventing the takeover of law into their own hands. However, this entire exercise loses its purpose when such an older person is involved. Reformation to re-enter the society as an objective of prisons becomes futile as the person is on the last leg of the life. Further, an old person cannot be meted out harsh treatments to give an example to the society as it would tantamount to cruelty. Mere existence in confinement seems more challenging than living without special arrangements and psychological support of family members for such persons. Thus, would it be justifiable to deny bail to a centenarian, nonagenarian-centenarian, or octogenarian? It can have just one answer: a thunderous NO anywhere in the globe. The only exceptions are extreme

perversity, extremely heinous crime, mass slaughters, or recidivists who refuse to mend their ways to blend with the community without disrupting the social order. Thus, it is hazardous to deny bail to people over a particular age, and there is a need to be sensitized about the sufferings associated with old age, realizing that sending these older people to jails or prisons serves no purpose whatsoever, for whom so ever, wheresoever. In the background of these peculiar facts, coupled with the petitioner being 81 years, date of birth as per AADHAR Card 12-5-1941, the Court is inclined to grant bail to the petitioner.”

9. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, pre-trial incarceration should not be a replica of post-conviction sentencing. As per paragraph 5 of the status report, the petitioner has been in custody since 09.09.2022. As per the same, the petitioner’s total custody in this FIR is around 02 years and 07 months. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.
10. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.
11. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail.
12. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.
13. While furnishing a personal bond, the petitioner shall mention the following personal identification details:
- | | | |
|----|--|--|
| 1. | AADHAR number | |
| 2. | Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk. | |
| 3. | Mobile number (If available) | |
| 4. | E-Mail id (If available) | |
14. This order is subject to the petitioner’s complying with the following terms.
15. The petitioner shall abide by all statutory bond conditions and appear before the

concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

16. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and residence of the victim until the statements of all non-official and informal witnesses in the trial are recorded. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to *Vikram Singh v Central Bureau of Investigation*, 2018 All SCR (Crl.) 458; and *Aparna Bhatt v. The State of Madhya Pradesh*, 2021:INSC:192, 2021 SCC Online SC 230.

17. Given the background of allegations against the petitioner, it becomes paramount to protect the victim, and their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

18. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

19. It is clarified that if the petitioner violates any bail condition, the State and/or the victim may file an application for bail cancellation before the trial court, which shall be

competent to cancel the bail or add more conditions. Furthermore, if the petitioner moves for deletion or dilution of any bail conditions, the trial court is empowered to do so.

20. This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

21. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

22. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

23. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

16.05.2025

Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.