



CRM-M-28464-2023 (O&M) and two more cases

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207 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1. CRM-M-28464-2023 (O&M)
Date of Decision: 27.02.2025

JASPAL SINGH ...Petitioner

Versus

STATE OF PUNJAB ...Respondent

2. CRM-M-53135-2023 (O&M)
Date of Decision: 27.02.2025

KHAWINDER SINGH ...Petitioner

Versus

STATE OF PUNJAB ...Respondent

3. CRM-M-33905-2024 (O&M)
Date of Decision: 27.02.2025

GURPAL SINGH ...Petitioner

Versus

STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Yashpal Thakur, Advocate
for the petitioner in CRM-M-28464-2023,
Mr. Bipin Ghai, Sr. Advocate with
Mr. Nikhil Ghai, Advocate and Mr. Paras Talwar, Advocate
for the petitioner in CRM-M-53135-2023 and
Mr. N.S. Ghuman, Advocate
for the petitioner in CRM-M-33905-2024.
Mr. Sandeep Kumar, DAG Punjab
assisted by Mr. Shakti Mehta, Advocate for the complainant.

Harpreet Singh Brar, J. (Oral)

1. All the aforementioned petitions shall be disposed of by this
common order as all the petitions have been filed under the same FIR.

2. Present petitions have been filed under Section 439 of Cr.P.C.

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27.05.2021 registered under Sections 302, 307, 148 and 149 of Indian Penal Code (Section 379 and 411 of IPC added later on) and Sections 25, 27 of Arms Act (Section 30-54/59 of Arms Act added later on) at Police Station Patran, District Patiala Punjab.

3. FIR(supra) was registered on the complaint made by Karamjit Singh son of Balvir Singh, who stated that they are two brothers and one sister. He and his sister are married and younger brother Charanjit Singh was unmarried. There was a dispute between his father Balvir Singh and his brother Chand Singh son of Karnail Singh and his sons Khawinder Singh and Guralp Singh @ Gagan with regard to the land regarding which, panchayat has been convened several times and cases are pending in the courts also. On the date of incident, in the evening, he went to his field on the motorcycle where Jaspal Singh was standing alongwith his motorcycle and on seeing him there, the complainant reached near the towers of Village Hamjheri via Maulviwala route where, Jaspal Singh alongwith Khawinder Singh and Guralp Singh @ Gagan and one unknown lady came there on three motorcycles from the front side, Khawinder Singh was holding 12 bore rifle in his hand, they encircled the complainant from the front side but he fled away by throwing his motorcycle there and then he reached his house on the motorcycle of Pargat Singh where his father Balvir Singh was also coming from the field on the motorcycle. He was not much far from the house then Karnail Singh whose residence is just opposite their house came in the street alongwith his mother Balwinder Kaur. In the meantime, Karnail Singh's brother Jaspal Singh and both the sons of Karnail Singh namely Khawinder Singh and Guralp Singh @ Gagan alongwith unidentified lady reached in front of complainant's house on their respective motorcycles. Karnail Singh and his mother raised *lalkara* and told their sons



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to shoot the complainant's party and teach them lesson for usurping/grabbing the land. At about 9.30 PM, Khawinder Singh fired two shots with his 12 bore rifle on complainant's father Balvir Singh, as a result of which, his father Balvir Singh fell on ground at the spot. Then his brother Charanjit Singh came out from their house, then Khawinder Singh also fired on his brother Charanjit Singh as a result of which, his brother also fell down near the gate of their house. When the complainant tried to run away into his house in order to save himself, then they also fired on him which hit on his wrist and near the elbow of his left arm. Then they also fired several times. He and his my mother Maya Devi had seen the whole incident with their own eyes, and raised alarm, "Marta Marta". In the meantime, people from the village gathered there and all the aforesaid accused fled away from the spot alongwith their respective weapons by raising *lalkara*. On the basis of aforesaid allegations, FIR(supra) was registered.

4. Learned counsel for the petitioners *inter alia* contends that all the petitioners have incarcerated for more than 03 years 08 months and till date only 02 prosecution witnesses have been examined, out of total 32 PWs. As such, the present petitions seeking grant of regular bail to the petitioners have been filed on account of delay in conclusion of trial and also on the ground of parity, as the co-accused Balwinder Kaur and Karnail Singh were granted the concession of regular bail by the Co-ordinate Benches of this Court vide orders dated 02.02.2023 and 23.03.2023 passed in CRM-M-51619-2021 and CRM-M-12443-2023 respectively.

5. Learned counsel for the petitioners Jaspal Singh and Gurpal Singh *inter alia* submits this is second application seeking grant of regular bail to both the petitioners and their first petitions were dismissed as withdrawn on

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came to India to meet their family, when the alleged incident has taken place and admittedly no overt act or injury is attributed to both the petitioners and the main accused is the third petitioner-Khawinder Singh, who is alleged to have given gun shot injury on the person of the deceased as well as the complainant, attracting the offences under Section 302 and 307 of Indian Penal Code. Petitioners Jaspal Singh and Gural Singh have been involved in the FIR(supra) on the allegations that petitioner Jaspal Singh has made a recce of the place of occurrence and both the petitioners were standing in their way, when the complainant was going to his agriculture fields and they tried to encircle him. Therefore, whether the petitioners can be held liable with the aid of Section 148 and 149 of IPC, would be a moot point to be determined by the learned trial Court and further it has been contended that the material witnesses, i.e. the complainant as well as the eye witness have already been examined by the learned trial Court. The petitioners have suffered incarceration for more than 03 years and 08 months. Moreover, co-accused Balwinder Kaur and Karnail Singh, who were also implicated in the FIR(supra) with the aid of Section 148 and 149 of Cr.P.C., have already been enlarged on regular bail by the Co-ordinate Bench of this Court vide orders dated 02.02.2023 and 23.03.2023 passed in CRM-M-51619-2021 and CRM-M-12443-2023 respectively.

6. Learned State counsel filed the custody certificates, which are taken on record and assisted by learned counsel for the complainant, *per contra* opposes the prayer made by learned counsel for the petitioners on the ground that petitioner Khawinder Singh is the main accused, who directly fired upon the deceased and also injured the complainant with fire arm injury by using a 12 bore gun. Further, the petitioners Jaspal Singh and Gural Singh have played

active roles as petitioner Jaspal Singh has done recce of the place of occurrence,

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whereas petitioner-Gurpal Singh has snatched the mobile phone from the deceased Charanjit Singh, who was making the videography of the incident and two motorcycles along with two mobile phones of the deceased and complainant were recovered from their possession. As such, their complicity is duly established on record. However, learned State counsel could not controvert the fact that out of total 32 prosecution witnesses, only 02 has been examined till date and petitioners have suffered the incarceration for more than 03 years and 08 months. Further, petitioners Jaspal Singh and Gurpal Singh have been involved with the aid of Section 148 and 149 of Indian Penal Code and two of the co-accused involved with the aid of Section 148 and 149 of IPC have been granted the concession of regular bail by Co-ordinate Benches of the Court vide orders dated 02.02.2023 and 23.03.2023 passed in CRM-M-51619-2021 and CRM-M-12443-2023 respectively.

7. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioners Jaspal Singh and Gurpal Singh are behind the bars for more than 03 years and 08 months. The final report under Section 173 Cr.P.C. has been presented before the concerned Court and subsequently, charges were framed. Currently, the trial is at the stage of prosecution witness and out of 32 PWs, only 02 have been examined till date. Further, the culpability, if any, would be determined at the time of final disposal of the case.

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 under-trial 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

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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.”

8. In view of the above and without commenting upon the merits of the case, and only on account of long custody undergone by them, the present petitions are allowed only qua petitioners Jaspal Singh and Gurpal Singh and both these petitioners are ordered to be released on regular bail, subject to their furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

9. However, no ground is made out to grant the concession of regular bail to the petitioner-Khawinder Singh. Therefore, petition bearing No. CRM-M-53135-2023 is dismissed being bereft of any merit.

10. 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

27.02.2025*Ajay Goswami*

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>