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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRR-566-2015

BALJINDER SINGH AND OTHERS .....PETITIONERS

VERSUS

STATE OF HARYANA .....RESPONDENT

|    |                                                                  |                |
|----|------------------------------------------------------------------|----------------|
| 1. | Date when Order was reserved                                     | 30.03.2026     |
| 2. | Pronouncement of Order                                           | 02.04.2026     |
| 3. | Date of uploading Order                                          | 02.04.2026     |
| 4. | Whether operative part or full Order is pronounced               | Yes            |
| 5. | Delay, if any, in pronouncing of full order, and reasons thereof | Not Applicable |

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. Sanjay Jain, Advocate,  
for the petitioners.

Mr. Amish Sharma, AAG, Haryana.

SANJAY VASHISTH, J

1. Present petition has been filed by the petitioners, challenging the impugned judgment dated 11.02.2015 and order of sentence dated 13.02.2015 (Annexure P-1) passed by the Court of learned Additional Sessions Judge, Ambala (Appellate Court), whereby judgment of acquittal dated 22.08.2014 passed by learned Judicial Magistrate 1<sup>st</sup> Class, Ambala (trial Court) was set aside and consequently, petitioners namely Baljinder Singh, Darbara Singh and Daljit Singh, were convicted for committing the offence under Section 223 of IPC.



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2. All the three petitioners (accused) were alleged to have been deputed to produce Sandeep Kumar before the Court of Sh. A.S. Narang, the then learned Additional Sessions Judge, Ambala, in connection with FIR No.237 dated 23.07.2007, registered under Sections 307/120-B IPC at Police Station Ambala City.

At about 6:00 p.m., information was received telephonically that while the police party, along with under-trial prisoners namely Sandeep Kumar and Satnam Singh, was boarding a bus, Sandeep Kumar managed to free himself from custody and escape.

3. Consequently, a separate FIR was registered, and all the three police officials were charge-sheeted to face trial under Section 223 of the IPC.

4. However, trial Court, while acquitting the accused, recorded the following findings:-

**“10.** *I find sufficient force in the contentions raised by the LD. defense Counsel. It is seen that the undertrial and co-accused Sandeep who had allegedly run away from Police custody was not handcuffed and therefore, he might have managed to free his hand from the police officials holding him while going towards the bus stop. The main thing required to be proved to hold the accused guilty is an intentional act on their part to enable the undertrial Sandeep to flee while being in custody. The prosecution has however, failed to prove such an intentional act on the part of the accused. Sometimes, the under trial prisoners are so clever that their own intention to away from the clutches of the guards cannot be assumed or predicted and all this happens in the spur of a moment. No official vehicle and weapons were provided to the accused police officials for the purpose of producing the undertrials including Sandeep in the court at Ambala. Further, PW2 Ishwar Singh who had investigated the matter during his cross-examination deposed that he had enquired about the occurrence*



*and one shop keeper namely Jaspal had informed him that the undertrial prisoner Sandeep had managed to ran away while urinating and could not be thereafter apprehended by the Police officials despite many efforts made by them. The under trial/co-accused Sandeep has already confessed his guilt and was sentenced to imprisonment for the period already undergone by him from 03-06-2010 to 15-02-2011 vide judgement dated 15-02-2011.*

*11. The prosecution evidence is clearly unreliable and in any case, inadequate to establish the charges leveled against the accused. There is no evidence direct or circumstantial, in support of the charges leveled against the accused in the charge sheet.”*

5. The prosecution preferred an appeal, pursuant to which the judgment of acquittal was reversed by the Appellate Court, primarily relying upon the findings of the investigation.

6. Learned counsel for the petitioners contended that, in the absence of sufficient evidence adduced by the prosecution, the Appellate Court misinterpreted the relevant legal provisions. It was argued that the Court erroneously presumed that, in all circumstances, it was the duty of the accused persons to exercise an extraordinary degree of vigilance. Consequently, the escape of accused Sandeep from custody was attributed to sheer negligence on the part of the petitioners, thereby attracting punishment under Section 223 of the IPC.

7. Counsel further submitted that evidence led by the prosecution was not adequately appreciated or discussed by the Appellate Court from the proper legal perspective. It was argued that the judgment of acquittal ought to have been revisited while upholding the fundamental principle of criminal jurisprudence, i.e. the presumption of innocence.



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8. In this regard, reliance was placed on the judgment of Hon'ble Supreme Court in 'Kumar and Others vs. Karnataka Industrial Cooperative Bank Limited and Another (passed in CRA Nos. 2049–2066 of 2012, decided on 14.12.2012), to contend that the presumption of innocence is further strengthened—indeed, doubled—once an acquittal has been recorded in respect of the allegations. Thus, counsel prayed for allowing the present petition.

9. *Per contra*, learned State counsel argued that, for the purposes of Section 223 IPC, intention of the accused is not determinative. Rather, the relevant consideration is whether there was negligence in discharging of official duty by the public servants entrusted with the custody of a person accused of an offence. It was submitted that if such negligence is established, ingredients of Section 223 IPC stand satisfied. Therefore, it was contended that no illegality or infirmity exists in the impugned judgment, and prayed for dismissal of the present petition.

10. This Court has considered the submissions advanced by learned counsel for the respective parties and has also perused the record, including the judgment of acquittal passed by the Trial Court.

11. In Mushtaq Ali vs. State of Rajasthan, 2025 NCRJ-JD 25339, the issue of criminal negligence was examined in detail, by giving reference to the judgment of Hon'ble Supreme Court, in the case titled as 'Jacob Mathew vs. State of Punjab (2005) 6 SCC 1', from which the principles were summarized as follows:-



*“A legal duty owed to another person (such as by a police officer toward detainees);*

*A reckless disregard of foreseeable consequences;*

*And an act or omission creating an obvious and serious risk of harm that was both foreseeable and preventable.”*

12. **In Mushtaq Ali vs. State of Rajasthan** (referred here above), the doctrine of criminal negligence was also considered in paragraph No.3.4, which is reproduced below, for reference:-

**“3.4.** *The doctrine of criminal negligence, particularly in the context of custodial responsibility under Section 223 IPC, demands a calibrated understanding of the threshold of culpability distinguishable from mere civil or administrative lapses. It is not every deviation from ideal conduct or lapse in vigilance that attracts penal consequences; rather, the law mandates a demonstration of such a degree of recklessness or gross dereliction of duty that it evidences a conscious disregard for the foreseeable consequences of one's omission. The jurisprudential distinction between civil and criminal negligence lies primarily in the presence of mens rea in the latter-an element of moral blameworthiness or at the very least, a recklessly indifferent attitude towards the duty imposed by law. In the case of a police official tasked with dual and simultaneous responsibilities-such as guarding under-trial prisoners while also attending to wireless operations in emergency-like conditions-the expectations of flawless, uninterrupted supervision must be weighed against the practical limitations of manpower and infrastructure. Criminal negligence cannot be predicated on errors of judgment or bona fide acts taken under emergent circumstances, particularly when driven by humanitarian considerations and lacking any element of intent or recklessness. Further, the application of criminal law must be tempered with a contextual and fact-sensitive inquiry: whether the accused acted in a manner that an ordinarily prudent officer, faced with similar constraints, would regard as palpably indefensible.*



*When viewed through this prism, the act of momentarily relocating the detainees to an open space, while retaining their handcuffs, amid a power outage and oppressive summer heat, cannot be readily equated with the grave dereliction that Section 223 IPC seeks to penalize. Indeed, the standard is not one of perfect foresight or hypothetical diligence, but of reasonableness under prevailing circumstances. The petitioner's conduct, however ill-fated in its consequence, does not rise to the level of culpable indifference or reckless disregard that the penal statute contemplates. It is well settled that penal provisions must be construed strictly, and in cases of doubtful culpability, the benefit must enure to the accused. Thus, in absence of proof establishing that the petitioner's act was so grossly negligent as to manifest a departure from the expected norms of custodial care, the invocation of Section 223 IPC cannot be sustained."*

13. This Court cannot overlook that PW-2 Ishwar Singh, in his cross-examination, admitted that SI Bhupinder Singh had explained the main reason for the escape of the accused, i.e. that they were not handcuffed. It was further admitted that no government wireless sets or firearms were provided to the officers responsible for the custody of the accused.

14. It has also come on record from the statement of PW-2 Ishwar Singh, that prisoner Sandeep succeeded in escaping while urinating and could not be apprehended despite subsequent efforts.

15. Admittedly, the prosecution has not led any evidence to show that the accused were provided with an official vehicle, arms, or ammunition to take necessary preventive measures in the event of an escape attempt.

16. It is also on record that prisoner Sandeep was involved in a case under Section 307 of the IPC (attempt to murder) and, upon



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confessing his guilt, was convicted vide judgment dated 15.02.2011, with the sentence taking into account the period already served by him from 03.06.2010 to 15.02.2011.

17. This Court further observes that, in a situation where a prisoner pre-plans an escape—by, for instance, requesting to go for urination—it would be unreasonable to expect a police official to act effectively, especially in the absence of a vehicle, arms, or other resources. In such circumstances, any fault must largely be attributed to the police administration, which failed to provide the necessary means for ensuring secure custody or for promptly regaining control over the accused.

Providing such facilities is the responsibility of the administration, particularly as the accused were not required to be handcuffed in accordance with existing instructions.

18. In view of the foregoing facts, this Court finds little merit in the judgment of conviction dated 11.02.2015 (Annexure P-1) passed by learned Additional Sessions Judge, Ambala.

19. Accordingly, judgment of conviction dated 11.02.2015 (Annexure P-1) passed by learned Additional Sessions Judge, Ambala, is set aside, and present petition is allowed.

(SANJAY VASHISTH)  
JUDGE

02.04.2026  
Lavisha

Whether speaking/reasoned      ✓Yes/~~No~~  
Whether reportable                ✓Yes/~~No~~