

Jaspal Singh Alias Jassa vs State Of Punjab And Others on 10 July, 2024

Author: Anoop Chitkara

Bench: Anoop Chitkara

Neutral Citation No:=2024:PHHC:085778

CRM-M-27982-2024
247 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27982-2024
Decided on: 10.07.2024

Jaspal Singh @ Jassa

...Petitioner

Versus

State of Punjab and others

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Avtar Singh Khinda, Advocate
for the petitioner.

Mr. Gurpartap S. Bhullar, AAG, Punjab.

Mr. Navjot Kaur, Advocate for respondents No.2 & 3.

ANOOOP CHITKARA, J.

FIR No.. Dated
139 01.10.2023

Police Station
Subhanpur,
Kapurthala

Sections
District 323, 324, 452, 427, 148, 149 IPC
and 325, 326, 307, 201, 120-B IPC
added subsequently

1. The petitioner apprehending arrest in the FIR captioned above, has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In paragraph 9 of the bail petition, the accused declares that he has no criminal antecedents.
3. Petitioner's counsel submits that matter has been compromised. He further prays for bail by imposing any stringent conditions including surrender of fire arms and undertakes not to enter in the property of victim and shall not contact or text the victim or victim's family. Petitioner's counsel argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. The state's counsel opposes the bail.

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5. Counsel appearing for respondents No.2 & 3 does not dispute the contention made by counsel for the petitioner and submits that they have no objection if bail is granted to the petitioner.

REASONING:

6. Prosecution's case is being taken from reply dated 10.07.2024, which reads as follows:-

"2. That the present FIR bearing No.139 dated 01.10.2023 u/s 323, 324, 452, 427, 148, 149 IPC (Sections 325, 326, 307, 201, 120B IPC added later on) was registered at PS Subhanpur, District Kapurthala against present petition and co-accused Ranjit Singh Lakhwinder Singh, Jasvir Singh, Kuldeep Singh, Vijay, Narinder Singh, Harjit Singh, Mukhtiar Singh and Patwari Singh on the statement of complainant (Jaswant Singh) wherein he stated that he is 8th class pass. His family is residing in Malaysia (abroad). He is residing with his friend Gurpreet Singh @ Gopi son of Jagtar Singh, resident of village Boot, PS Subhanpur Distt. Kapurthala. The complainant further stated that on 27.09.2023, Amrik Singh, brother of Gurpreet Singh, was returning back home after finishing his work and on the way Jaspal Singh son of Avtar Singh resident of village Boot gave him (Amrik Singh) beatings. Amrik Singh had been working at the shop of Kuldeep Singh doctor son of Gulzar Singh and at that time Jaspal Singh had also damaged the motorcycle which was standing outside the shop of Kuldeep Singh and had also broken the standing outside the shop of Kuldeep Singh and had also broken the AC.

Regarding this Gurpreet Singh had lodged the protest with Jaspal Singh.

3. That complainant has further stated that on 29.09.2023 around 10.00 P.M. he alongwith his friend Gurpreet Singh @ Gopi son of Jagtar Singh, Ravinder Singh @ Padda son of Surjit Singh, Sukhpal Singh son of Amrik Singh, residents of village Boot were returning back to the house of Gurpreet Singh from the side of Gurudwara Sahib Baba Amarnath. When they reached opposite to the house of Swaran Singh son of Munsha 10 Singh, then from the opposite side in the street, they saw (i) (present Petitioner) Jaspal Singh @ Jassa son of Avtar Singh armed with datar, (ii) Ranjit Singh son of Mukhtiar Singh armed with datar, (iii) Lakhvir Singh @ Lakha son of Narinder Singh

armed with dang, (iv) Jasvir @ Jassi son of Narinder Singh armed with dang, (v) Vijay son of Surinder Singh @ Giani armed with datar, (vi) Kuldeep Singh son of Mukhitar Singh armed with datar, (vii) Narinder Singh son of Puran Singh armed with datar, (viii) Harjit Singh son of Gurmukh Singh armed with datar, (ix) Mukhitar Singh son of Puran Singh armed with datar, (x) Patwari Singh son of Kala Singh armed with datar, residents of village Boot came there and then Jaspal Singh raised the lalkara that they (complainant party) should be caught and should not be spared. On this, they (complainant party) out of fear went inside the house of Swaran Singh son of Munsha Singh. Then he 2 of 10 Neutral Citation No:=2024:PHHC:085778 CRM-M-27982-2024 (complainant) went inside the room and from the window, he saw that Jaspal Singh (present petitioner) inflicted his dasti datar blow upon Sukhpal Singh which fell at the backside of his head. Then Kuldeep Singh inflicted his dasti datar blow upon Sukhpal Singh which fell near his left ear. Then Mukhtiar Singh inflicted his dasti datar blow from its reverse side upon Ravinder Singh which fell towards the left side of his head. Then Patwari inflicted his dasti datar blow from its reverse side upon Ravinder Singh which fell at the upper side of his head. Then Narinder Singh inflicted his dasti datar blow from its reverse side upon Ravinder Singh which fell towards the right side of his head.

4. That complainant has further stated that then all the assailants inflicted blows upon the windows to take him out of the room and due to that the glasses of the windows got broken and they took him (complainant) out of the room. 222 50 20 Then Jaspal Singh (present petitioner) inflicted his dasti datar blow upon inflicted his dasti datar blow upon him which fell towards the left side of his head. Then Lakhvir Singh inflicted his dasti dang blow upon Ravinder Singh which fell on his right arm. Then Vijay Kumar inflicted his dasti datar blow upon him (complainant) which fell towards the left side of his head. Then Ranjit Singh inflicted his dasti datar blow upon him which fell on neck. Then Jasvir Singh inflicted his dasti dang blow upon him and in order to save from the blow, he raised his right hand on the blow fell on his fingers. Then Lakhvir Singh inflicted his dasti dang blow upon him which fell on his left hand.

5. That the complainant has further stated that at that time, Gurpreet Singh was hiding underneath the cot. Then all the assailants also gave beatings to Gurpreet Singh. Then Swaran Singh and his family members and they (complainant party) raised raula "Maar Dita Maar Dita." On this, all the assailants (accused) fled away alongwith their respective weapons. Then mother of Gurpreet Singh namely Harbans Kaur got them (complainant party) admitted at Civil Hospital, Kapurthala, from where Sukhpal Singh was referred to Jalandhar as such he requested to take legal action against them.

6. That complainant Jaswant Singh was medico legally examined vide MLR No.469/NSM/CH/KPT-2023 dated 29.09.2023 and as per MLR he suffered 4 injuries on his person and out of said injuries injury no.1 and 3 were declared grievous and injury no.2 and 4 were declared simple. That out of said injuries injury no.1 was caused by Jaspal Singh (present petitioner) with Datar on back side of his head said injury was declared grievous and attracts U/s 326 IPC, Injury No.2 was caused by accused Ranjit Singh with Datar on back of his neck and said injury was sharp 20 A Pared simple and attracts U/s 324 IPC, injury no.3 was caused by accused Vijay on left side of his head and said injury was blunt and declared simple and attracts section 323 IPC and injury no.4 was caused by accused Jasvir Singh with Datar on the first finger of right hand of complainant and

said injury was blunt and declared simple and attracts u/s 323 IPC.

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7. That injured Sukhpal Singh was medico legally examined vide MLR No.465/NSM/CH/KPT-2023 and as per MLR he suffered two injuries on his person. That out of said injuries injury no.1 was caused by accused Jaspal Singh (present petitioner) with Datar on back side of his head said injury was declared grievous and dangerous to life and attracts U/s 307 IPC, Injury No.2 was caused by accused Ranjit Singh with Datar on his head near left ear and said injury was sharp and declared simple and attracts U/s 324 IPC.

8. That injured Ravinder Singh was medico legally examined vide MLR No.468/NSM/CH/KPT-2023 dated 29.09.2023 and as per MLR he suffered four injuries on his person. That out of said injuries injury no.1 was caused by accused Mukhtiar Singh with reverse side of Datar on left side of his head and said injury was blunt in nature and was declared grievous and attracts U/s 325 IPC, injury no.2 was caused by accused Patwari Singh with Datar on left side of his head and said injury was blunt in nature and was declared grievous and attracts U/s 325 IPC, and injury no. 3 was caused by accused Narinder Singh with reverse side of Datar on right side of his head and said injury was blunt nature and was declared grievous and attracts U/s 325 IPC and injury 22280 2004 was TGED phay HIPISION caused by accused Lakhvir Singh @ Lakha with Stick (DANG) wist of right arm and said injury was blunt in nature and was declared simple.

9. That offence U/s 325/307/326 IPC was added in present FIR vide DDR No.23 dated 13.10.2023.

10. That after registration of FIR co-accused Ranjit Singh, Lakhvir Singh, Kuldeep Singh, Harjit Singh, Narinder Singh and Mukhtiar Singh were granted interim anticipatory bail by the Court of Ld. Additional Sessions Judge Kapurthala and they joined investigation and got recovered weapons used in the offence and lateron their anticipatory bail was confirmed by said Court.

11. That accused Jaspal Singh i.e. petitioner, Jasvir Singh and Vijay Singh could not be arrested as such proclamation proceedings were initiated against them by Ld. Trial Court for 15.05.2024 and the co-accused Patwari Singh was died on 19.11.2023."

7. The FIR was registered way back on 1st October 2023, and despite ample opportunities, the Investigator/ SHO and the Supervisory Officers took no effective steps to arrest the accused. Given the time gap, the absence of any malicious conduct by any of the accused during this period, no objection of victim to the petition and the other factors peculiar to this case, there would be no justifiability for custodial or pre-trial incarceration at this stage. Furthermore, the petitioner is a first offender, and one of the relevant factors would be to provide an opportunity to course correct.

8. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the 4 of 10 Neutral Citation No:=2024:PHHC:085778 CRM-M-27982-2024 cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav,

2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing require, and a change in the fact situation. In *State of Rajasthan v Balchand*, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In *Gudikanti Narasimhulu v Public Prosecutor*, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In *Prahlad Singh Bhati v NCT, Delhi*, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In *Dataram Singh v State of Uttar Pradesh*, 2018:INSC:107 [Para 7], (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

9. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborate and stringent conditions. In *Sushila Aggarwal v. State (NCT of Delhi)*, 2020:INSC:106 [Para 92], (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In *Sumit Mehta v. State of N.C.T. of Delhi*, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal 5 of 10 Neutral Citation No:=2024:PHHC:085778 CRM-M-27982-2024 freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

10. 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, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

11. In *Madhu Tanwar and Anr. v. State of Punjab*, 2023:PHHC:077618 [Para 10, 21], CRM-M-27097-2023, decided on 29-05-2023, this court observed, [10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an

officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

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, in the following terms:

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned Investigator/SHO OR the concerned Court, before whom the bonds are required to be furnished. When the bonds are to be furnished before a Judicial Magistrate, then in case of the non-

availability of the concerned Judicial Magistrate, to any other nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the 6 of 10 Neutral Citation No:=2024:PHHC:085778 CRM-M-27982-2024 concerned officer/court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court. OR

(b). Petitioner to hand over to the concerned investigator a fixed deposit for Rs. Ten thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for a similar amount.

(c). Such court shall have a lien over the funds until the case's closure or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

(d). The petitioner is to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section

438(2) of the Code of Criminal Procedure, 1973, and of this bail order.

(e). While furnishing personal bond, the petitioner shall mention the following personal identification details:

1. AADHAR number
2. Passport number (If available) when the attesting officer/court considers it appropriate or considers the accused a flight risk.
3. Mobile number (If available)

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4. E-Mail id (If available)

13. The petitioner is directed to join the investigation as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872, or Section 23 of Bhartiya Sakshya Adhiniyam, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM, let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

14. The petitioner shall not influence, browbeat, pressurize, or make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

15. Given the background of allegations against the petitioner, it becomes paramount to protect the victim, 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 today 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.

16. Till the completion of the trial, the petitioner shall not contact, call, text, message, remark, stare, stalk, make any gestures or express any unusual or inappropriate, verbal 8 of 10 Neutral Citation No:=2024:PHHC:085778 CRM-M-27982-2024 or otherwise objectionable behavior towards the victim and the victim's family, either physically, or through phone call or any other social media, through any other mode, nor shall unnecessarily roam around the victim's home.

17. 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 till the recording of the statements of all non-official and informal witnesses in the trial. 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.

18. During the trial's pendency, if the petitioner repeats or commits any offense where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible for the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was cautioned not to indulge in criminal activities earlier. Otherwise, the bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C. if not canceled due to non-appearance or breach of conditions.

19. The conditions mentioned above imposed by this court are to endeavor that the accused does not repeat the offense and to ensure the safety of the witnesses, victim, and their families. 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."

20. The applicant's advocate and the officer in whose presence the applicant signs personal bonds shall explain all terms of this bail order to the applicant in a language they can comprehend.

21. If the petitioner finds the bond amount beyond social and financial reach, it may 9 of 10 Neutral Citation No:=2024:PHHC:085778 CRM-M-27982-2024 be brought to the notice of this Court for appropriate reduction. Further, if the petitioner finds bail condition(s) as violating fundamental, human, or other rights or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

22. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

23. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

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

25. In return for protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

26. There would be no need for a certified copy of this order 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. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed of.

(ANOO P CHITKARA)
JUDGE

10.07.2024
anju rani

Whether speaking/reasoned:	Yes
Whether reportable:	No.

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