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SUMEDH SINGH SAINI

v.

STATE OF PUNJAB AND ANOTHER

(Criminal Appeal No. 827 of 2020)

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DECEMBER 03, 2020

**[ASHOK BHUSHAN, R. SUBHASH REDDY AND
M.R. SHAH, JJ.]**

Code of Criminal Procedure, 1973: s.438 – Anticipatory bail –

- C Brother of the victim-deceased lodged an FIR against the appellant for offence alleged to have taken place in 1991 – FIR was lodged for offence punishable under ss.364, 201, 344, 219 and 120-B IPC and subsequently the offence punishable under s.302 IPC was added on the statements of two of the co-accused who were allowed to become approver – Appellant applied for anticipatory bail for offence under s.302 IPC – Sessions Judge
- D dismissed the application – High Court also dismissed the bail application filed before it – In the instant appeal, plea of appellant was that the present FIR was not maintainable as being second FIR on the same set of facts and having been registered after delay of 29 years of alleged incident – It was submitted that earlier attempt to falsely implicate appellant failed and similar FIR for the very incident in question with similar allegations was quashed by Supreme Court in the case of *Davinder Pal Singh Bhullar – It was further submitted that the informant had heavily relied upon the liberty that was reserved in favour of father of the deceased to file fresh proceedings – However during his lifetime, father of the deceased did not initiate any fresh proceedings and the present FIR was filed after nine years of judgment in case of *Davinder Pal Singh Bhullar and 29 years after the incident that too by the brother of the deceased – Held: Considering the fact that the impugned FIR was lodged by the brother of the deceased after a period of almost 29 years from the date of incident and after a period of 9 years from the date of decision in the case of *Davinder Pal Singh Bhullar and nothing was on record that in between he had taken any steps to initiate criminal proceedings and/or lodged an FIR, a case is made out by the appellant for grant of anticipatory bail – Whether the fresh/present proceedings are permissible in law are yet to be considered in the pending proceedings for quashing the impugned FIR – In view of status of the appellant that he retired in 2018 as Director General of Police, Punjab after 30 years of service and the alleged incident

was of the year 1991 and even in the present FIR initially there was no allegation for the offence under s.302 IPC and the allegations were only for the offences under ss.364, 201, 344, 330, 219 and 120-B of the IPC, for which there was an order of anticipatory bail in favour of the appellant and subsequently the offence under s.302 IPC was added on the basis of the statements of approvers only, the appellant has made out a case for anticipatory bail.

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Allowing the appeal, the Court

HELD: 1. Informant and the State are relying upon the observations made by this Court in the case of *Davinder Pal Singh Bhullar and the liberty reserved in para 117 to the applicant who earlier filed the petition under Section 482 Cr.P.C. (father of the deceased) to take recourse to fresh proceedings, if permissible in law. However, the said liberty was as such in favour of the father of the deceased who in the earlier round of litigation before the High Court filed the petitions under Section 482 Cr.P.C. This Court reserved the liberty in favour of the father of the deceased to take recourse to fresh proceedings by specifically observing that if permissible in law. The father of the deceased died in the year 2014. Till 2014, the father of the deceased did not initiate any fresh proceedings. After a period of 9 years from the date of decision of this Court in the case of Davinder Pal Singh Bhullar, all of a sudden, now the informant – brother of the deceased woke up and initiated the present criminal proceedings. Whether the fresh/present proceedings are permissible in law are yet to be considered by this Court in the pending proceedings for quashing the impugned FIR. [Para 8][819-F-H; 820-A-B]

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2. Looking to the status of the appellant that he has retired in the year 2018 as Director General of Police, Punjab after 30 years of service and the alleged incident was of the year 1991 and even in the present FIR initially there was no allegation for the offence under Section 302 IPC and the allegations were only for the offences under Sections 364, 201, 344, 330, 219 and 120-B of the IPC, for which there was an order of anticipatory bail in favour of the appellant and subsequently the offence under Section 302 IPC was added on the basis of the statements of approvers only, the appellant has made out a case for anticipatory bail. [Para 9] [820-C-D]

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- A *State of Punjab v. *Davinder Pal Singh Bhullar (2011) 14 SCC 770; [2011] 15 SCR 540; Pradeep Ram v. State of Jharkhand 2019 (9) SCALE 120; Sushila Aggarwal v. State (NCT of Delhi) (2020) 5 SCC 1 – referred to.*

Case Law Reference

- B [2011] 15 SCR 540 referred to **Para 4.1**
2019 (9) SCALE 120 referred to **Para 4.4**
(2020) 5 SCC 1 referred to **Para 4.4**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.

- C 827 OF 2020

From the Judgment and Order dated 08.09.2020 of the High Court of Punjab and Haryana at Chandigarh in CRM-M No. 26304 of 2020.

- D Mukul Rohatgi, A.P.S. Deol, Sidharth Luthra, K.V. Viswanathan, Sr. Advs., Ms. Misha Rohatgi, Nakul Mohta, Himmat S. Deol, Jaibir Sethi, Bharat Monga, Sartej Singh Narula, Ms. Diya Sodhi, Ms. Anusha Nagarajan, Karan Bharihoke, Pradeep Virk, Avinash Menon, Advs. for the appearing parties.

The Judgment of the Court was delivered by

- E **M.R. SHAH, J.**

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 08.09.2020 passed by the High Court of Punjab and Haryana at Chandigarh in CRM-M No. 26304 of 2020, by which the

- F application submitted by the appellant herein for anticipatory bail in connection with FIR No. 77 dated 06.05.2020 for the offence punishable under Section 302 IPC, lodged with Police Station City Mataur, District S.A.S. Nagar, Mohali has been dismissed, the original petitioner – accused has preferred the present appeal.

- G 3. That one Palwinder Singh Multani, brother of one Balwant Singh Multani (deceased) has lodged an FIR against the appellant at Police Station City Mataur initially for the offences punishable under Sections 364, 201, 344, 219 and 120-B of the IPC, and subsequently the offence punishable under Section 302 IPC has been added.

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3.1 It is alleged that in the year 1991 one Balwant Singh Multani – A brother of the informant was illegally abducted from his residence at Mohali by a team of officials operating under the instructions of the appellant; that he was severely and inhumanly tortured while in custody, by and at the behest of the appellant. It is further alleged that a false and fabricated FIR No. 112 of 1991 might have been registered at the instance of the appellant to suggest that the victim was brought to the police station Qadian from where the victim was alleged to have escaped.

3.2 That apprehending his arrest in connection with FIR No. 77 dated 06.05.2020, the appellant filed anticipatory bail application before the learned Additional Sessions Judge, Mohali. At this stage, it is required to be noted that when the appellant applied for anticipatory bail, the allegations in the FIR against the appellant were only for the offences punishable under Sections 364, 201, 344, 330, 219 and 120-B of the IPC. That by order dated 11.05.2020, the learned Additional Sessions Judge, Mohali granted anticipatory bail in favour of the appellant. That thereafter as the appellant was apprehending that the offence under Section 302 IPC may be added, he approached the learned Additional Sessions Judge, Mohali for anticipatory bail for the offence punishable under Section 302 also. By order dated 10.07.2020, the learned Additional Sessions Judge granted protection by way of three days' advance notice in case of addition of offence under Section 302 IPC. It appears that thereafter three co-accused in FIR No. 77 dated 06.05.2020 wanted to become approver and they submitted the applications before the learned Chief Judicial Magistrate, Mohali for grant of pardon and declaring them as approver under Section 306 Cr.P.C. However, all the three applications came to be dismissed by the learned Chief Judicial Magistrate, Mohali, vide order dated 7.8.2020. However, thereafter the applications submitted by the other co-accused – Jagir Singh and Kuldip Singh to grant them pardon and permit them to become approver came to be allowed by the learned Chief Judicial Magistrate, Mohali, vide order dated 18.08.2020. That thereafter the statements of Jagir Singh and Kuldip Singh were recorded by the learned Judicial Magistrate (First Class), Mohali, which were against the appellant. On the basis of the statements of the aforesaid two co-accused who subsequently turned approver – Jagir Singh and Kuldip Singh, an application was submitted before the learned Judicial Magistrate, First Class (Duty Magistrate) seeking addition of Section 302 IPC in FIR No. 77 dated 06.05.2020. That by order dated 21.08.2020, the learned Judicial Magistrate, First Class (Duty Magistrate) allowed the said application and thus section 302 IPC came to be added.

- A 3.3 That thereafter the appellant applied for anticipatory bail for the offence under Section 302 IPC before the learned Additional Sessions Judge, Mohali by way of bail application no. 1527 of 2020. That the learned Additional Sessions Judge vide order dated 01.09.2020 dismissed the said application. That thereafter the appellant approached the High Court of Punjab and Haryana at Chandigarh with an application for grant of anticipatory bail being CRM-M No. 26304 of 2020. By the impugned judgment and order, the High Court has dismissed the said anticipatory bail application. Hence, the appellant has preferred the present appeal.
- B 4. Shri Mukul Rohatgi, learned Senior Advocate has appeared for the appellant – accused, Shri Sidharth Luthra, learned Senior Advocate
- C has appeared for the State of Punjab and Shri K.V. Vishwanathan, learned Senior Advocate has appeared on behalf of the original informant.
- D 4.1 Number of submissions have been made by Shri Rohatgi, learned Senior Advocate appearing on behalf of the appellant – accused in support of his prayer to grant anticipatory bail.
- E It is vehemently submitted that the present FIR is filed with a malafide intention to harass the appellant and at the instance of the present party in power in the State. It is submitted that even otherwise the present FIR is not maintainable as being a second FIR on the same set of facts and has been registered after delay of 29 years of the alleged
- F incident. It is submitted that earlier attempt to falsely implicate the appellant failed and a similar FIR for the very incident in question and with somewhat similar allegations came to be quashed by this Court in the case of State of Punjab v. Davinder Pal Singh Bhullar, reported in (2011) 14 SCC 770.
- G 4.2 It is further submitted that the informant heavily placed reliance upon the liberty reserved in favour of the father of Balwant Singh Multani to file fresh proceedings. It is submitted that however during his life time the father of Balwant Singh Multani did not initiate any fresh proceedings and after a period of six years and after the death of the father of Balwant Singh Multani, the present FIR has been filed after 9 years of the judgment of this Court in the case of Davinder Pal Singh Bhullar (*supra*) and after 29 years of the incident and that too by the brother of Balwant Singh Multani with the political support of the current State Government. It is submitted that, as such, when initially the present FIR was lodged, it was lodged on 6.5.2020 only for the offences under Sections 364, 201, 344,
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330, 219 and 120-B of the IPC. It is submitted that thereafter the investigating agency with a malafide intention pressurised two co-accused and made them approver and obtained the statements against the appellant and on the basis of the statements of the two co- accused who subsequently turned as approver, the offence punishable under Section 302 IPC has been added.

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4.3 It is further submitted that even the present FIR also suffers from a serious jurisdictional error, inasmuch as, the FIR is registered in Mohali on the directions of the SSP, Mohali, whereas, in fact, all the events even as per the complainant occurred within the jurisdiction of P.S. Chandigarh. It is submitted that as per Sections 177 and 178, Cr.P.C. the ordinary place of investigation and trial is within whose local jurisdiction the offence has occurred. It is submitted that the present FIR No. 77 and the proceedings initiated pursuant thereto are a blatant abuse of process, malafide and misuse of policing power. It is submitted that as such the appellant has already moved an application for quashing FIR No. 77 dated 6.5.2020, which came to be dismissed by the High Court against which a special leave petition is pending before this Court.

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4.4 It is further submitted that even otherwise while adding the charge under Section 302 IPC in FIR No. 77 dated 6.5.2020, the procedure as required to be followed as per the decisions of this Court in the cases of Pradeep Ram v. State of Jharkhand, reported in 2019 (9) SCALE 120 and Sushila Aggarwal v. State (NCT of Delhi), reported in (2020) 5 SCC 1, has not been followed. It is submitted that even the procedure adopted by the learned Magistrate, who allowed the prosecution to add the offence punishable under Section 302 IPC is unknown to the procedure required to be followed under the provisions of the Cr.P.C.

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4.5 It is further submitted by Shri Rohatgi, learned Senior Advocate appearing on behalf of the appellant that the appellant is ready and willing to co-operate with the investigation, however, without prejudice to his rights and contentions in the pending proceedings before this Court for quashing the FIR. It is submitted that the appellant is highly decorated officer with a distinguished service record. Shri Rohatgi has also made submissions on malafide, political vendetta and the harassment by the police.

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4.6 Making the above submissions and relying upon the aforesaid decisions of this Court, it is prayed to allow the present application and grant anticipatory bail to the appellant.

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- A 5. The present application is vehemently opposed by Shri Sidharth Luthra, learned Senior Advocate appearing on behalf of the respondent-State and Shri K.V. Vishwanathan, learned Senior Advocate appearing on behalf of the original informant. Relying upon the statements of Jagir Singh and Kuldeep Singh which were recorded during the course of investigation, it is vehemently submitted that a case has been made out against the appellant-accused for the offence under Section 302 IPC. It is submitted that the offence punishable under Section 302 IPC has been added after obtaining the permission from the learned Magistrate. It is submitted that considering the material available on record, the learned Magistrate allowed the application submitted by the prosecution/ investigating agency to add the offence punishable under Section 302 IPC. It is submitted that therefore a *prima facie* case is made out against the appellant.
- B 5.1 Now so far as the delay in lodging the FIR is concerned, it is submitted that as per catena of decisions of this Court, mere delay and/or political vendetta cannot be a ground to quash the criminal proceedings, more particularly when the allegations are very serious and the allegations against the police officers are of misuse of power, misuse of position, kidnapping and thereafter killing the innocent person. It is submitted that truth must come out. It is submitted that the custodial interrogation of the appellant is required.
- C 5.2 It is further submitted that even the present FIR cannot be said to be the second FIR as submitted on behalf of the appellant. It is submitted that the present criminal proceedings/FIR is by the brother of the deceased who lost his brother and considering the liberty reserved by this Court in the case of Davinder Pal Singh Bhullar (*supra*).
- D 5.3 It is vehemently submitted by Shri Sidharth Luthra, learned Senior Advocate appearing on behalf of the State and Shri K.V. Vishwanathan, learned Senior Advocate appearing on behalf of the original informant that the appellant is a very influential person and may tamper with the evidence and therefore this is not a fit case to grant anticipatory bail to the appellant under Section 438 Cr.P.C.
- E 5.4 Making the above submissions, it is prayed to dismiss the present application by submitting that when both, the learned trial Court as well as the High Court have refused to exercise the discretion in favour of the appellant and have refused to grant anticipatory bail to the appellant, the same may not be interfered with by this Court.

6. We have heard the learned counsel appearing on behalf of the appellant-accused, learned counsel appearing on behalf of the State and learned counsel appearing on behalf of the original informant. A

At the outset, it is required to be noted that in the present appeal the only question which is required to be considered is whether the appellant is entitled to the anticipatory bail under Section 438 Cr.P.C.? B

7. Number of submissions have been made by the learned counsel appearing on behalf of the appellant-accused on political vendetta, malafide, delay in lodging the FIR, even the maintainability of the impugned FIR etc. However, taking into consideration that the quashing petition filed by the appellant-accused is pending before this Court and the issue whether the FIR/criminal proceedings are required to be quashed or not is at large before this Court, we do not propose to elaborately deal with all the submissions made by the learned counsel appearing on behalf of the respective parties. C

However, considering the fact that the impugned FIR has been lodged/filed by the brother of the deceased after a period of almost 29 years from the date of incident and after a period of 9 years from the date of decision of this Court in the case of Davinder Pal Singh Bhullar (supra) and nothing is on record that in between he had taken any steps to initiate criminal proceedings and/or lodged an FIR, we are of the opinion that at least a case is made out by the appellant for grant of anticipatory bail under Section 438, Cr.P.C. Many a time, delay may not be fatal to the criminal proceedings. However, it always depends upon the facts and circumstances of each case. However, at the same time, a long delay like 29 years as in the present case can certainly be a valid consideration for grant of anticipatory bail. D E F

8. Informant and the State are relying upon the observations made by this Court in the case of Davinder Pal Singh Bhullar (supra) and the liberty reserved in para 117 to the applicant who earlier filed the petition under Section 482 Cr.P.C. (father of the deceased) to take recourse to fresh proceedings, if permissible in law. However, suffice it to say that the said liberty was as such in favour of the father of the deceased who in the earlier round of litigation before the High Court (from which the SLP(Criminal) No. 6503-6509/2011 were arisen) filed the petitions under Section 482 Cr.P.C.. This Court reserved the liberty in favour of the father of the deceased to take recourse to fresh proceedings by specifically observing that if permissible in law. It is reported that the father of the G H

- A deceased died in the year 2014. Till 2014, the father of the deceased did not initiate any fresh proceedings. After a period of 9 years from the date of decision of this Court in the case of Davinder Pal Singh Bhullar (*supra*), all of a sudden, now the informant – brother of the deceased has woken up and has initiated the present criminal proceedings. Whether the fresh/present proceedings are permissible in law are yet to be considered by this Court in the pending proceedings for quashing the impugned FIR.

9. Looking to the status of the appellant and it is reported that he has retired in the year 2018 as Director General of Police, Punjab after

- C 30 years of service and the alleged incident is of the year 1991 and even in the present FIR initially there was no allegation for the offence under Section 302 IPC and the allegations were only for the offences under Sections 364, 201, 344, 330, 219 and 120-B of the IPC, for which there was an order of anticipatory bail in favour of the appellant and subsequently the offence under Section 302 IPC has been added on the basis of the
- D statements of Jagir Singh and Kuldip Singh – approvers only, we are of the opinion that the appellant has made out a case for anticipatory bail.

10. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court, as well as, the learned Additional Sessions Court dismissing

- E the anticipatory bail applications of the appellant for the offence punishable under Section 302 IPC in connection with FIR No. 77 dated 6.5.2020, registered at P.S. City Mataur, District S.A.S. Nagar, Mohali are hereby quashed and set aside. It is ordered that in case of arrest of the appellant – Sumedh Singh Saini in connection with FIR No. 77 dated 6.5.2020, registered at P.S. City Mataur, District S.A.S. Nagar, Mohali for the offence punishable under Section 302 IPC, he shall be released on bail on furnishing personal bond in the sum of Rs.1,00,000/- (Rupees one lakh only) and two sureties of the like amount and to surrender the passport and to cooperate with the investigation (however without prejudice to his rights and contentions in the pending proceedings to quash the impugned
- F FIR).

11. The appeal is allowed to the aforesaid extent.