

# Tejpal Singh And Others vs State Of Punjab on 12 November, 2009

**Author: Rakesh Kumar Jain**

**Bench: Rakesh Kumar Jain**

CRM-M 22310 of 2008

-1-

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRM-M 22310 of 2008

Date of Decision: 12.11.2009

Tejpal Singh and others

..Petitioners.

Vs.

State of Punjab

..Respondent.

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present : Mr.Sanjiv Manrai, Advocate for the petitioners.

Mr.Ranbir Singh Rawat, AAG Punjab for the respondent/State.

Mr.R.S.Pandher, Advocate for the complainant.

Mr.Amit Rawal, Advocate for  
Mr.S.S.Grewal and Mr.Gaurav Goel, Advocates.

RAKESH KUMAR JAIN, J.

This is a petition for grant of anticipatory bail on behalf of four petitioners namely, Tejpal Singh, Amarjeet Singh, Mohan Singh and Mandip Singh, under Section 438 of the Code of Criminal Procedure, 1973 (for short `Cr.P.C.'), in case registered vide FIR No.101 dated 26.12.2007 under Sections 447, 458, 427, 506, 148, 149, 120-B IPC at P.S.Bhadson, Tehsil Nabha District Patiala.

The aforesaid FIR was lodged by Gurjeet Kaur widow of Sukhwinder Singh against the present petitioners and some others. The present petition dated 19.8.2008 was filed by the aforesaid petitioners through Sh.Vishal Deep Goyal, Advocate on 21.8.2008. At that time, the registry of the High Court had put up the following objection "Returned to the counsel in original as Crl.M.No.20700-M-2008 u/s 438 Cr.P.C. is still pending for 28.8.2008 qua petitioners No.1 to 3."

The petitioners re-filed the present petition on 29.8.2008 by removing the objections as under :

"The petitioners did not authorize any other counsel except the undersigned for filing this petition and they have no knowledge regarding the earlier filing by some other counsel. This petition may be listed before the bench as it is.

Needful has been done".

After the removal of aforesaid objection, the case was listed before this Court on 4.9.2008 in which notice of motion was issued for 4.12.2008 and in the meantime, the petitioners were released on interim bail subject to the conditions envisaged under Section 438(2) Cr.P.C. On the adjourned date, learned counsel for the State apprised the Court of the fact that petitioners had earlier filed petition bearing CRM M-20700 of 2008 which was dismissed on 28.8.2008. The case was then adjourned to 16.1.2009.

On 16.1.2009, counsel for the petitioner had submitted that in fact no such petition (CRM M-20700 of 2008) for bail was ever filed by the petitioners and if filed by some Advocate then that was not in their knowledge. In view of the statement made, file of CRM M-20700 of 2008 was also ordered to be tagged with the present case.

On perusal of CRM M-20700 of 2008, it was found that the same was filed by Amarjit Singh, Mohan Singh and Tejpal Singh under Section 438 Cr.P.C. seeking anticipatory bail in the present FIR. The said petition was filed by Sh.S.S.Grewal and Sh.Gaurav Goel, Advocates and the grounds were settled by Sh.Jagmohan Singh Chowdhary, Sr.Advocate. The aforesaid petition dated 12.8.2008 was filed on the same day, however, registry put some objections which were removed and it was re-filed on 13.8.2008 but listed on 20.8.2008 in which the following order was passed :

"Present : Mr.Gaurav Goel, Advocate.

Learned counsel contends that the dispute of civil nature has been given the colour of a criminal offence. Moreover co- accused of the petitioners have already been granted the concession of bail by this Court on 17.7.2008.

Notice of motion to Advocate General, Punjab for 28.8.2008.

In the meantime, the petitioners shall appear before the Investigating Officer on 25.8.2008 at 11.00 a.m. In the event of their arrest, the petitioners be admitted to interim bail on their furnishing bonds to the satisfaction of the Investigating/Arresting Officer. They shall join investigation as and when required. They shall also abide by all the conditions, as envisaged by Section 438(2) Cr.P.C."

On the adjourned date i.e. 28.8.2008, no one had put in appearance on behalf of the petitioners and the following order was passed :

"As per office report, notice could not be issued to the respondent as the process fee was not filed.

Faced with this situation, this Court is left with no option but to dismiss this petition for want of prosecution. Ordered accordingly."

The aforesaid orders were put to the counsel for the petitioners, who had stated that the petitioners did not engage Sh.S.S.Grewal, Advocate practicing at Civil Court, Nabha and Sh.Gaurav Goel, Advocate to file CRM M-20700 of 2008 titled as Amarjit Singh and others Vs. State of Punjab. On this submission, vide order dated 13.8.2009, this Court directed the registry to issue notices to Sh.S.S.Grewal and Sh.Gaurav Goel, Advocates. When the case was listed on 31.8.2009, Sh.S.S.Grewal and Sh.Gaurav Goel, Advocates appeared through Sh.Amit Rawal, Advocate and stated that on 23.8.2008, Tejpal Singh (petitioner No.1) had taken away brief/papers of CRM M-20700 of 2008 after filing the subsequent petition i.e. the present case (CRM M-22310 of 2008). The Court had also directed Sh.S.S.Grewal Advocate to file his affidavit and petitioner No.1 Tejpal Singh was directed to be present in Court on 14.9.2009. Petitioner No.1 Tejpal Singh appeared before this Court and stated that he did not engage Sh.S.S.Grewal and Sh.Gaurav Goel, Advocates for the purposes of filing anticipatory bail before this Court. He further stated that he has given fee of Rs.50,000/- for the purpose of filing of bail application in the Court at Patiala as well as at Nabha. At this stage, Sh.Amit Rawal, Advocate had stated that petitioner No.1 Tejpal Singh and others who were granted anticipatory bail on 20.8.2008 in CRM M-20700 of 2008 had even joined the investigation. This fact is admitted by the counsel for the State, on instructions received from ASI Baltej Singh. Thereafter, petitioner No.1 was directed to file his affidavit. On 18.9.2009, petitioner No.1 Tejpal Singh filed his affidavit. On 5.10.2009 Sh.S.S.Grewal, Advocate filed his affidavit. On 22.10.2009 petitioners No.2 and 3 also filed their affidavits. Learned counsel for the petitioners has submitted that in the present case i.e. CRM M-22310 of 2008 when order dated 4.12.2008 was passed in which the State counsel had stated that the petitioners had earlier filed bail application No.CRM M- 20700 of 2008 which has already been dismissed on 28.8.2008, the case was adjourned to 16.1.2009 and all the three petitioners namely, Amarjit Singh, Mohan Singh and Tejpal Singh filed affidavit dated 13.1.2009 in which they had averred that they did not engage Sh.S.S.Grewal, Advocate at Nabha to contest their case and to file bail application in the High Court. It was also averred that Sh.S.S.Grewal, Advocate in connivance with the other party, filed CRM M-20700 of 2008 in which their arrest was stayed by this Court and thereafter, intentionally and deliberately that Advocate in connivance with the complainant, did not deposit process fee and avoided appearance on 28.8.2008 as such that petition bearing CRM M-20700 of 2008 was dismissed for want of prosecution. It is further averred that all that has been done is in order to make other party happy and to send the petitioners behind the bars as the petitioners did not engage him to file petition before the High Court. It is also averred that no one from the petitioners ever signed the affidavit before the Oath Commissioner of High Court or anywhere else in the support of the petition filed by S.S.Grewal, Advocate of Nabha.

After the above deliberations, Sh.S.S.Grewal, Advocate filed his affidavit dated 11.9.2009 along with receipt (Annexure A-1) alleging about his engagement by the petitioners to file anticipatory bail application before this Court vide CRM M-20700 of 2008 in which notice of motion was issued for

28.8.2008 and interim bail was granted and the petitioners were directed to appear before Investigating officer. It is also averred that the petitioners had obtained certified copy of order dated 20.8.2008 and had appeared before the Investigating Officer on 25.8.2008 to join the investigation and furnished their bail bonds. Since the petitioner No.1 was not inclined to pay the balance fee, therefore, he took away brief/papers of CRM M-20700 of 2008 on 23.8.2008 against a receipt and did not pursue that matter by filing process fee and appearance on 28.8.2008, therefore, the said case was dismissed for non prosecution on 28.8.2009.

Sh.S.S.Grewal, Advocate filed another affidavit dated 5.10.2009 alleging that he is in legal practice for the last 22 years and has been working in the office of Sh.J.S.Chaudhary, Sr.Advocate since 2004 and has instructed him in almost 100 cases. Tejpal Singh (petitioner No.1) had engaged him in Civil Suit No.107 of 2007 titled as Hardev Singh Vs. Sant Kaur pending in the Court of Addl.Civil Judge (Sr.Division) Nabha and also brought a power of attorney (Vakalatnama) bearing thumb impression of Sant Kaur defendant in the said suit who is none else but the mother-in-law of Tejpal Singh. Hardev Singh who is plaintiff in the civil suit is the son of Sukhwinder Singh, who died in a road accident regarding which one FIR was registered and Sh.S.S.Grewal, Advocate was engaged in the case arising out of the said FIR. In both the cases, civil suit and FIR, Rs.33,000/- was settled as professional fee, out of which, Tejpal Singh paid Rs.10,000/-. In the present FIR No.101 dated 26.12.2007 there were seven accused, namely Sant Kaur, Manjinder Singh, Kulvinder Singh, Kuldip Singh, Amarjit Singh, Mohan Singh, Tejpal Singh. Tejpal Singh contacted Sh.S.S.Grewal, Advocate to file anticipatory bail for all of them. Sh.S.S.Grewal, Advocate filed three sets of anticipatory bail applications by segregating old persons and ladies and the petitioners herein for which an amount of Rs.33,000/- was settled i.e. Rs.11,000/- for each case. Anticipatory bail on behalf of Sant Kaur, Amarjeet Kaur, Randeep Kaur was allowed by Addl.Sessions Judge vide his order dated 18.2.2008 but the bail application of others was dismissed. Tejpal Singh again contacted Sh.S.S.Grewal, Advocate for filing anticipatory bail on behalf of Manjinder Singh, Kulwinder Singh, Kuldeep Singh on one hand and Tejpal Singh, Amarjeet Singh, Mohan Singh and Mandeep Singh. On the other hand, fee was settled at Rs.50,000/- each in case the bail application was to be argued by Sh.J.S.Chaudhary, Sr.Advocate and Rs.25,000/- each in case Sr.Advocate was not to appear. Crl.Mic.No.4415-M of 2008 on behalf of Manjinder Singh and others was filed through Sh.J.S.Chaudhary, Sr.Advocate which was allowed on 11.4.2008. Then the bail application on behalf of the present petitioner and others was filed in which notice was issued on 28.8.2009 and interim bail was granted but Tejpal Singh did not pay the balance fee as only Rs.25,000/- was paid. As he did not agree to pay the balance fee, he took away the brief of CRM M-20700 of 2008. It is also averred by Sh.S.S.Grewal, Advocate that his balance fee i.e. Rs.23,000/- for the cases filed at Nabha, Rs.30,000/- of Sh.J.S.Chaudhary, Sr.Advocate in respect of anticipatory bail application of Manjinder Singh and others, Rs.15,000/- in respect of anticipatory bail application in CRM M-20700 of 2008 is still balance as only Rs.10,000/- has been paid.

Since this Court had given an opportunity even to the accused to file their affidavits, therefore, affidavit has been filed by Tejpal Singh (petitioner No.1) dated 17.9.2009 in which the averments made in the affidavit dated 13.1.2009 were exactly repeated. However, in the affidavit filed by the other two co-accused Amarjeet Singh and Mohan Singh, they have denied the engagement of Sh.S.S.Grewal, Advocate to file bail application on their behalf.

Having heard learned counsel for the parties, perusing the record and giving my thoughtful consideration to the contentions raised by counsel for the respective parties, I have found that how the process of law could be misused by the Advocates in order to procure docket of an unscrupulous litigant. In a tug of war of two sets of Advocates, in order to give a fillip to their professional practice, the interest of justice and criminal process of law has been crucified for a litigant who has no respect for law.

There is no doubt in my mind that both Sh.S.S.Grewal and Sh.Gaurav Goel, Advocates on one side and Sh.Vishaldeep Goyal, Advocate on the other, had the solemn duty to assist the Court, in which they have miserably failed to act as an officer of the Court and have preferred to secure their financial interest.

It has been stated on oath by Sh.S.S.Grewal, Advocate that Tejpal Singh (petitioner No.1) had engaged him for the purpose of filing anticipatory bail before this Court for which a sum of Rs.50,000/- was settled as professional fee as it is to be argued by Sh.J.S.Chaudhary, Sr.Advocate in the set of bail application to be filed on behalf of Manjinder Singh, Kulwinder Singh and Kuldeep Singh for which Rs.20,000/- had been paid and Rs.30,000/- was balance. Similarly, in the other bail application of Tejpal Singh, Amarjeet Singh, Mohan Singh again Rs.50,000/- was settled for Sh.J.S.Chaudhary, Sr.Advocate in which admittedly he was not engaged as I had called Sh.J.S.Chaudhary, Sr.Advocate in Court and asked him as to whether he has been engaged in CRM M-20700 of 2008 to which he had stated at the bar that he had no idea about this case. He had made a statement that he has been engaged to appear in the bail application filed on behalf of Manjinder Singh, Kulwinder Singh and Kuldeep Singh. If Sh.J.S.Chaudhary, Sr.Advocate was not engaged and was not even instructed in CRM M-20700 of 2008 as Tejpal Singh had not even paid his fee according to Sh.S.S.Grewal, Advocate out of the fee of Rs.50,000/-, only Rs.10,000/- was paid to him in CRM M-20700 of 2008 then there was no occasion for him to file a bail application by way of CRM M-20700 of 2008 with grounds settled by Sh.J.S.Chaudhary, Sr.Advocate. This action of Sh.S.S.Grewal, Advocate is highly objectionable and strongly deprecated and he is being warned not to repeat this unethical practice in future where grounds of appeal has been shown to have been settled by Sr.Advocate who is not aware of that case at all. Sh.S.S.Grewal, Advocate has further not acted as an officer of the Court in true spirit as he did not appear in CRM M-20700 of 2008 to make a statement that brief/papers of the said case were withdrawn/taken away by his client Tejpal Singh against a receipt dated 23.8.2008. It is at least expected of an Advocate practising for the last 22 years that he should assist the Court and apprise the Court of a factual position, even if brief had been taken away by the client.

Reverting to the story of the Advocate Sh.Vishaldeep Goyal who had stated before the Court that he had taken certified copy of the order dated 20.8.2008 when the interim bail was granted by this Court in CRM M-20700 of 2008. It is really not understood as to why an advocate who is not counsel in the case should take certified copy of the case of the other counsel and supply it to the litigant. Probably, to my mind, it is only for winning favour by showing his better services than the Advocate engaged by him. The Court can read from the facts of the case as to what might have transpired when Tejpal Singh (petitioner No.1) had taken the brief from Sh.S.S.Grewal, Advocate. At that time, Sh.S.S.Grewal must have asked for balance fee which according to him was Rs.50,000/-

but it must have been declined by Tejpal Singh as he had been granted interim bail and being sanguine of the success of the case asked to return his brief. Sh.Vishaldeep Goyal, Advocate should have insisted his appearance in CRM M-20700 of 2008 and asked the petitioner Tejpal Singh to get a 'No Objection' from the previous counsel before superseding him but since he knew that Tejpal Singh has not paid his fee, therefore, he designed a novel way and filed a fresh petition on behalf of the petitioners, whose petition was already pending and alleged therein that they had not filed the earlier case. Since Sh.Vishaldeep Goyal, Advocate is having only four years' practice as stated therefore, at this stage the Court is refrained to take any legal action against him but it would not desist in warning him that he should mend his ways otherwise if he indulges in the same unethical practice then the day is not too far of when he would even lose his license to practice.

Insofar as the petitioners are concerned, less said is better because after having been granted interim anticipatory bail in CRM M

-20700 of 2008 the petitioners had appeared before the Investigating Officer and as per the statement of counsel for the state, on instructions received from ASI Baltej Singh, the petitioners had appeared before the then I.O. Harvinder Singh and were released on bail on their furnishing bail bonds to his satisfaction. Therefore, on one hand the petitioners have been appearing before the Investigating Officer and taking benefit of interim bail granted in CRM M-20700 of 2008 and on the other hand, when they had to pay balance professional fee to the counsel, who had appeared on their behalf, they had sagacity to deny even their engagement by filing false affidavits in this Court.

Faced with the situation, Sh.Sanjiv Manrai, Advocate appearing on behalf of the petitioners has prayed that bail application on behalf of all the four petitioners may be allowed to be withdrawn.

However, I am not inclined to allow the petitioners to withdraw the petition.

In S.P.Chengalvaraya Naidu (dead) by L.Rs Vs. Jagannath (dead) by L.Rs and others AIR 1994 SC 853 the Apex Court has held as under :

"The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property- grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal-gains indefinitely. We have not hesitation to say that a person whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

Apparently, it is a case of fraud having been played on this Court by filing a frivolous and vexatious claim, therefore, the present petition is dismissed with costs quantified at Rs.30,000/- to be shared and paid to State of Punjab by the petitioners namely, Tejpal Singh, Amarjeet Singh and Mohan Singh respectively.

(Rakesh Kumar Jain) 12.11.2009 Judge Meenu