
(2009) 05 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-23922 of 2008

Gurwinder Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 22-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2), 482

Citation : (2010) 2 RCR(Criminal) 15

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Advocate : Sudershan Thakur, for the Appellant; Sudhir Nehra, Addl. A.G., Punjab, For the Respondent Nos. 2 and 3 Mr. P.S. Brar, for the Respondent

Final Decision : Allowed

Judgement

S.S. Saron, J.—The petitioners Gurwinder Singh and Gurmit Singh have filed the present petition u/s 439(2) read with Section 482 of the Code of Criminal Procedure ("CrPC" - for short) and Article 227 of the Constitution of India for cancellation of the anticipatory bail granted to Amritpal Singh and Sukhwinder Singh (respondents Nos. 2 and 3) vide order dated 14.8.2008 (Annexure P5) passed by the learned Additional Sessions Judge, Muktsar.

2. It is submitted that petitioner No. 1 is a law student and studying in Law College at Faridkot and is aged about 19 years. Petitioner No. 2 is the father of petitioner No. 1 and is an agriculturist and is aged about 42 years. On 30.6.2008, Gurmit Singh (petitioner No. 2) and his son Gurwinder Singh (petitioner No. 1) were to irrigate their paddy crop. Gurwinder Singh (petitioner No. 1) had gone to have a round of their fields and he noticed that there was a breach in the water channel and the water was flowing to the fields of Amritpal Singh (respondent No. 2). Amritpal Singh (respondent No. 2) was armed with 'kahi' (spade) and Sukhwinder Singh (respondent No. 3) was armed with 'gandasi' and they were sitting in their fields. Gurwinder Singh (petitioner No. 1) asked respondents Nos. 2 and 3 as to why they had caused a breach in the

flow of water. Suddenly, Amritpal Singh (respondent No. 2) raised a lalkara that they would cause breach of the water and they could do whatever they want. Gurwinder Singh (petitioner No. 1) started plugging the breach and in the meantime, Sukhwinder Singh (respondent No. 3) with an intention to kill Gurwinder Singh (Petitioner No. 1) inflicted a 'gandasi' blow on his head. Gurwinder Singh (petitioner No. 1) fell down with his face towards the ground and while he was lying on the ground Amritpal Singh (respondent No. 2) inflicted injury with his 'kahi' (spade). Gurmit Singh (petitioner No. 2) intervened and Sukhwinder Singh (respondent No. 3) gave a 'gandas' blow on his head. Gurmit Singh (petitioner No. 2) raised an alarm of 'mar ditta mar ditta'. Then both the assailants (respondents Nos. 2 and 3) ran away from the spot with their respective weapons. The petitioners were brought to the Civil Hospital, Muktsar and after noticing serious head and brain injuries, they were referred to the Adesh Hospital, Muktsar for the purpose of X-ray and CT Scan. In the meanwhile, other relatives of the petitioners came to the hospital and took the petitioners to Bharat Brain Hospital, Bathinda on 30.6.2008. After their examinations by a team of doctors headed by Dr. Dinesh Gupta, Neuro Surgeon, the gravity, risk and possible complications were explained. They were given option to shift the patient to any other healthcare centre. However, it was insisted by the injured that they be admitted and treated in the said hospital. Gurwinder Singh (petitioner No. 1) remained admitted in the Hospital from 30.6.2008 to 10.7.2008. His medical treatment and examination was conducted. ASI Shamsher Singh, Police Station Sadar Muktsar along with HC Surinder Singh reached Civil Hospital, Muktsar. HC Surinder Singh sought opinion of the doctors with regard to the fitness of the injured for recording their statements. The doctor opined that they were unfit to make their statements. On 1.7.2008 ASI Shamsher Singh on receipt of a telephonic call from the Police Chowki Thermal Plant Bathinda along with HC Surinder Singh, Rajinder Singh Constable, PHG Nathu Ram reached Bharat Brain Hospital, Bathinda and got written opinion of the doctors with regard to the fitness of the injured for recording their statements. The doctors opined that Gurwinder Singh (petitioner No. 1) son of Gurmit Singh (petitioner No. 2) was unfit to get his statement recorded. However, Gurmit Singh (petitioner No. 2) was declared fit to get his statement recorded. On which the statement of petitioner No. 2 was recorded which was read over to him and by understanding it and taking it to be correct, he signed it in English which was verified by ASI Shamsher Singh.

3. In the MLR of Gurwinder Singh (petitioner No. 1), the doctor observed two injuries with blunt weapon and advised x-ray examination for one injury. In the case of Gurmit Singh (petitioner No. 2), it was observed that he had suffered one injury with blunt weapon and X-ray examination of the same was advised. On the basis of MLR and report of CT Scan, the offence u/s 308/34 IPC was found to be made out against Amritpal Singh (respondent No. 2) and Sukhwinder Singh (respondent No. 3). For registering a case, memo by hand was sent through Constable Rajinder Singh. On the basis of the above allegations, FIR was

registered.

4. Amritpal Singh (respondent No. 2) filed an application for grant of anticipatory bail before the learned Additional Sessions Judge, Muktsar on 17.7.2008. Thereafter Sukhwinder Singh (respondent No. 3) also filed an application on 19.7.2008 for grant of anticipatory bail. On coming to know of the filing of the applications for grant of anticipatory bails by respondent Nos. 2 and 3, the petitioners filed objections before the learned Additional Sessions Judge, Muktsar opposing the applications for grant of anticipatory bail. The State also opposed the applications grant of anticipatory bail. The learned Additional Sessions Judge, Muktsar vide her order dated 14.8.2008 has allowed the applications for the grant of anticipatory bails to respondent Nos. 2 and 3 vide order dated 14.8.2008 (Annexure P5). The cancellation of which is sought by the petitioners in the present petition. The learned Additional Sessions Judge noticed the contentions of the learned counsel for the accused (respondent Nos. 2 and 3). It was contended that as per statement of the complainant Gurmit Singh (petitioner No. 2) the alleged occurrence took place at 10/10.15 a.m. whereas as per the MLR they were admitted in the hospital at 9.15 a.m. It was observed that the injured cannot be admitted in hospital for injuries before the alleged occurrence and that the supplementary statement showing the time of occurrence at 8.15 a.m. seemed to be a cover up exercise by the police.

5. After hearing learned counsel for the petitioners and perusing the records, notice of motion was issued in the case on 16.9.2008 for 10.11.2008. During the pendency of the petition on 7.1.2009, the following order was passed :-

This application has been filed seeking cancellation of bail granted to respondents Nos. 2 and 3. The learned Additional Sessions Judge, Muktsar vide her order dated 14.8.2008 (Annexure P5) has inter alia observed that according to the complainant - Gurmeet Singh, the occurrence took place at 10/10.15 a.m. whereas as per the MLR, the injured was admitted in the hospital at 9.15 a.m. Besides, it has been observed that the supplementary statement showing the time of the occurrence as 8.15 a.m. seemed to be a cover-up exercise by the Police. In terms of the Photostat copy of the FIR, which has been placed on record by the learned counsel for the petitioner, the time of the occurrence appears to have been tampered with. The time of occurrence has been mentioned from 10.15 p.m. to 10.15 a.m. From the carbon copy of the record of the FIR which is available on the Police file, the time of the occurrence is not clear. In any case, it is the accepted position by the State counsel that in the zimni recorded on 1.7.2008, the time 8.15 a.m. has been changed to 8.15 p.m.

Let the SSP Muktsar file an affidavit explaining the position of tampering with the record with regard to the time of the occurrence. The necessary affidavit be filed by the adjourned date.

Adjourned to 28.1.2009.

6. In compliance with the said order Sh. Gurpreet Singh Gill, PPS, Senior

Superintendent of Police, Muktsar filed his affidavit dated 27.1.2009 in which it is accepted that there is a change as regards the time of occurrence. Besides, it has been submitted that departmental action has been initiated against ASI Shamsher Singh and HC Rajinder Singh. Time was taken by learned counsel for the respondents Nos. 2 and 3 to go through the reply.

7. Learned counsel for the petitioners has submitted that respondent Nos. 2 and 3 despite assaulting and causing grievous injuries to the petitioners particularly petitioner No. 1 are roaming about freely with an order of anticipatory bail in their favour. It is submitted that the police changed the time of the occurrence by making cuttings which resulted in passing of the order dated 14.8.2008 (Annexure P5) granting anticipatory bail to the respondents Nos. 2 and 3. In view of the gravity of the offence and the nature of allegations, it is submitted that the respondents Nos. 2 and 3 are not entitled to the concession of anticipatory bail and, therefore, the anticipatory bail granted to them is liable to be cancelled.

8. Learned counsel for the State has submitted that indeed there is cutting in the time of occurrence in the police record which is also accepted by Sh. Gurpreet Singh Gill, PPS, Senior Superintendent of Police, Muktsar in his affidavit dated 27.1.2009 and therefore, departmental inquiry has been ordered against ASI Shamsher Singh and HC Rajinder Singh. As such, it is submitted that the order granting anticipatory bail to respondent Nos. 2 and 3 is liable to be cancelled. Learned counsel appearing for respondents No. 2 and 3 has, however, submitted that the order granting anticipatory bail to respondents Nos. 2 and 3 is just and proper and is not liable to be cancelled.

9. It is submitted that in view of the false case set up by the petitioners which is evident from the material on record, the anticipatory bail has rightly been granted. In any case, it is submitted that there is no misuse of the concession of anticipatory bail, therefore, the same is not liable to be cancelled. Besides, it is submitted that the injuries are not such which would warrant the cancellation of the bail rather the doctor in his report on 13.10.2008 has recorded that nature of injuries can be declared only after receiving the clinical notes. Besides, it is recorded that as the patients were taken to Bharat Brain Hospital, Bathinda and according to clinical notes by Dr. Dinesh Gupta, the nature of injuries can be said to be grievous injuries and not dangerous to life. Therefore, it is submitted that the bail is not liable to be cancelled. It is submitted that grounds of cancellation of bail should be those which arise after the grant of bail and should be referable to the conduct of the accused while on bail. In support of his contentions, he cites *Nityanand Rai v. State of Bihar*, 2005 (2) RCR(Cri.) 468 : 2005 (2) AC 66 (SC).

10. I have given my thoughtful consideration to the matter and with the assistance of the learned counsel for the parties gone through the record. The FIR in the case has been registered on the statement of Gurmit Singh (petitioner No. 2) which was recorded by ASI Shamsher Singh on 1.7.2008 at Bharat Brain

Hospital, Bathinda. According to the complainant Gurmit Singh (petitioner No. 2), his son Gurwinder Singh (petitioner No. 1) had gone to have a round of their fields at about 10/10.15 a.m. He noticed a breach in the water channel and water was flowing towards the fields of Amritpal Singh (respondent No. 2) who is the elder brother of the complainant Gurmit Singh (petitioner No. 2). While Gurwinder Singh (petitioner No. 1) son of the complainant Gurmit Singh (petitioner No. 2) was plugging the breach, Amritpal Singh (respondent No. 2) armed with 'kahi' and his son Sukhwinder Singh (respondent No. 3) armed with gandas were there. They raised lalkara and Sukhwinder Singh (respondent No. 3) with an intention to kill Gurwinder Singh (petitioner No. 1) inflicted 'gandas' blow on his head and on account of the blow, Gurwinder Singh (petitioner No. 1) fell down with his face towards the ground. While he (Gurwinder Singh - petitioner No. 1) lay on the ground, Amrit Pal Singh (respondent No. 2) inflicted a 'kahi' (spade) blow on his back. When the complainant Gurmit Singh (petitioner No. 2) intervened, Sukhwinder Singh (respondent No. 3) gave a 'gandas' blow on his head. The complainant then raised an alarm and both the accused fled away from the spot with their respective weapons. The learned Additional Sessions Judge, Muktsar in her order dated 14.8.2008 noticed that as per statement of the complainant Gurmit Singh (petitioner No. 2) the alleged occurrence took place at 10/10.15 a.m., whereas as per the MLR, the petitioners were admitted in the hospital at 9.15 am. This according to the contentions raised by learned counsel for the accused (respondent Nos. 2 and 3) showed that a false case had been foisted upon them (respondent Nos. 2 and 3). Therefore, the learned Additional Sessions Judge held that they were entitled to the concession of anticipatory bail. The learned Additional Public Prosecutor for the State had submitted that the complainant Gurmit Singh (petitioner No. 2) had got his supplementary statement recorded wherein it was alleged that the occurrence took place at 8.10 am and, therefore there was no discrepancy in the admission of both the injured in the hospital and the occurrence of causing injuries by the accused. As such, they (respondent Nos. 2 and 3) were not entitled for benefit of pre- arrest bail. The learned Additional Sessions Judge, Muktsar noticed that as per the statement of complainant -Gurmit Singh (petitioner No. 2) and his own son Gurwinder Singh (petitioner No. 1) who suffered injuries was studying law. Therefore, he was educated and had a good sense regarding the time and place of occurrence because of his education. The complainant also signed his statement in English. This showed that he was also an educated person and in his previous statement that was recorded, he had alleged that the occurrence took place at 10.00/10.15 a.m., whereas as per the MLR, both were admitted in the hospital at 9.15.am. Therefore, it was observed that they (petitioners) could not be admitted in the hospital for injuries before the alleged occurrence. It was further observed that the supplementary statement showing the time of occurrence as 8.15 a.m. seemed to be a cover up exercise by the police. Because of the discrepancy regarding the time of occurrence in the previous statement of the complainant as well as the MLR, it was a fit case where accused (respondent Nos. 2 and 3) should be given the

benefit of concession of pre-arrest bail. Accordingly, respondent Nos. 2 and 3 were granted pre-arrest bail by the learned Additional Sessions Judge, Muktsar. The primary aspect, therefore, which weighed in the mind of the learned Additional Sessions Judge, Muktsar for grant of pre-arrest bail was that as per the statement of the complainant Gurmit Singh (petitioner No. 2), the incident had occurred at 10.00/10.15 a.m., whereas injured (petitioners) were admitted in the hospital for injuries at 9.15 a.m. The supplementary statement of Gurmit Singh (Annexure P2) injured it was observed ? was a cover-up. On perusal of the police record, it is quite apparent that the time of occurrence has been changed at various places. Change in timing has been accepted by the learned counsel for the State even. The photocopy of the FIR against the column 3(a) i.e. "occurrences of offence day" it is recorded as Monday and date of occurrence is recorded as 30.6.2008. Against the column of; "time period", it is recorded from 10.15 p.m. to 10.15 a.m. However, there is an overwriting over the figure 10, besides, a.m. is changed to p.m. and p.m. is changed to a.m. In column 3 (b) regarding "information received at Police Station", the date is mentioned as 1.7.2008 and time of receipt of information is recorded as 8.15 p.m. It may be noticed that there are cuttings at various places in the FIR as regards the time of occurrence. The information that was received on 1.7.2008 was from Bharat Brain Hospital, Bhatinda, whereas ASI Shamsheer Singh as per the FIR (Annexure P1) had gone along with HC Surinder Singh on 30.6.2008 to Civil Hospital, Muktsar and obtained an opinion of doctors with regard to fitness of the injured (petitioners) for recording their statements and the doctor declared them to be not fit for recording the statements. Therefore, the time of receiving information which is recorded as 1.7.2008 at 8.15 p.m. is incorrect. Information was received at the Police Station earlier on 30.6.2008. Otherwise, Shamsheer Singh ASI would not have gone with HC Surinder Singh to the Police Station on 30.6.2008 and also sought opinion of the doctor. It may also be noticed that the time of the zimni which is recorded as 8.15 a.m. on 1.7.2008 has been changed to p.m. from a.m. Besides, as already noticed, the time of occurrence in the FIR has also been tampered with in Column 3(a). In the circumstances, the supplementary statement of the complainant Gurmit Singh (petitioner No. 2) cannot be said to be a cover-up and in the said statement he has given the time of occurrence as 8.10 a.m. in the morning. Thereafter, the injured-petitioners were admitted in the Hospital at 9.15 a.m.

11. In *Baladin and Others Vs. State of Uttar Pradesh*, it was held that record made by a police investigating officer has to be considered by the Court only with a view to weighing the evidence actually adduced in Court. If the police record becomes suspect or unreliable on the ground that it was deliberately perfunctory or dishonest, it loses much of its value and the court in judging the case of a particular accused has to weigh the evidence given against him in court keeping in view the fact that the earlier statements of witnesses as recorded by the police is tainted record and has not as great a value as it otherwise would have in weighing all the material on the record as against each individual accused.

Therefore, the police record i.e. the FIR and the case diary having been found to be tampered with would lose much of its value and significance. However, this aspect would be required to be gone into by the trial Court after evidence has been led. In the present case, anticipatory bail has been granted to the accused (respondents Nos. 2 and 3) on the basis of police record which has been tampered with and, therefore, tainted. Therefore, this Court can examine the veracity of the material as available and rectify the wrong by passing an appropriate remedial order. In Nityanand Rai's case (*supra*) cited by learned counsel for the respondent Nos. 2 and 3, it was held that consideration of an application for grant of bails stands on a different footing than one for cancellation of bail and grounds for cancellation of bail should be those which arose after the grant of bail and should be referable to the conduct of the accused while on bail. There is no dispute to the said proposition indeed cancellation of bail is a harsh order because it takes away the liberty of an individual which has been granted and is not to be lightly resorted to and generally merits of the order granting bail is not to be gone into. However, for maintaining the confidence of the judicial system it is equally true that an accused should not get bail on the basis of record which is being prepared by the police with taint. Besides, in *Brij Nandan Jaiswal v. Munna @ Munna Jaiswal and another*, 2009(1) RCR (Cri.) 529 : 2009(1) RAJ 188 (SC) it was observed by the Supreme Court that the complainant can always question an order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled is on account of its misuse. The bail order can be tested on merits also. In the said case, bail was granted in a murder case without considering the pros and cons of the matter. It was observed while granting bail, particularly in serious cases like murder, some reasons justifying the grant are necessary. The order granting the bail was set aside with the direction to re-decide the matter. Therefore, it is not that as if the merit of the order cannot be gone into particularly when it is shown that the learned Additional Sessions Judge, Muktsar was misled into relying on the police record which had been tampered with. This Court in the case of *Rajinder Singh v. State of Haryana*, 1998 (4) RCR (Cri.) 663 cancelled the bail where the victim had sustained fracture and was in hospital, but the Investigating Officer wrongly stated that the victim was discharged and then prompted the judge to grant bail. It was held that the bail was made by misrepresentation and the SSP was asked to hold an inquiry against the Investigating Officer. Similarly, in *Jagroop Singh v. State of Punjab*, 1998(2) RCR(Cri.) 697, this Court cancelled the bail which was obtained by misrepresentation of facts and fabricating the FIR. It was observed that this was a ground to cancel the bail even though the accused was no longer required by the police. Continuation of such an order, it was observed, shakes very faith in the system.

12. Therefore, in the facts and circumstances, it may be noticed that Gurwinder Singh (petitioner No. 1) had suffered a serious injury on his head. The injuries on his person were caused according to the allegations in the FIR by respondent

Nos. 2 and 3 and that too while he had gone to plug the breach in the water channel which was being drained out by the accused. Therefore, on these allegations when there are admittedly grievous injuries suffered by petitioner No. 1, the grant of anticipatory bail to the accused (respondents Nos. 2 and 3) on basis of misrepresentation would be highly improper. This is more so for the reason that the SSP, Muktsar in his affidavit has accepted that the time of occurrence has been changed.

13. In view of the above, the CrI. Misc. petition is allowed and the order granting pre-arrest bail to respondents Nos. 2 and 3 is cancelled. In case Respondent Nos. 2 and 3 surrender before the police within 5 days from the receipt of copy of the order, their application for regular bail shall be considered by the learned Additional Sessions Judge, Muktsar within five days thereafter.