

## Gurbax Singh alias Kuku Vs State of Punjab

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Sept. 5, 2001

**Acts Referred:** Arms Act, 1959 â€” Section 25, 27

Criminal Procedure Code, 1973 (CrPC) â€” Section 438, 439, 498

Penal Code, 1860 (IPC) â€” Section 120

**Citation:** (2001) 4 RCR(Criminal) 339

**Hon'ble Judges:** Nirmal Singh, J

**Bench:** Single Bench

**Advocate:** R.S. Ghai and Vinod Ghai, for the Appellant; Varinder Singh, for Complainant and Rajan Gupta, for CBI, for the Respondent

**Final Decision:** Dismissed

### Judgement

Nirmal Singh, J.

This is a petition u/s 438 Cr.P.C. for bail in case FIR No. 247 dated 13.11.2000 registered at police station Dharamket,

Distt Ferozepur, under Sections 302, 307, 148, 149, 120-B IPC and Sections 25/27/54/59 of the Arms Act.

2. The case against the petitioner was registered on the statement of Des Raj Mukhija. The FIR reads as under :-

That I am resident of Kamboj Mohalla Dharamkot. My brother Harmesh Kumar Mukhija is having a Commission Agent Shop in Dana Mandi,

Dharamkot. Today Harmesh Kumar Mukhija was sitting on the seat in the room. I and Rajpal son of Milkha Singh were sitting near him on stools

and Chanderpal resident of Bakar was standing outside. It was about 9.35 A.M. That Gurbux Singh alias Kukku resident of Kamalke Hall, near

old Satsang Bhawan Dharamkot armed with 12 bore gun of small Butt, Surjit Singh resident of Amiwala, who stays with Gurbux Singh armed with

12 bore gun, Hippy who lives at Gilian Dharamkot and runs an electronic shop at old Bus standanned with apis-tol came inside the shop. As soon

as they entered the shop, Gurbux Singh @ Kuku raised a lalkara that Mukhija should not be allowed to escape and he fired from his 12 bore gun

at my brother Harmesh Kumat Mukhija. Simultaneously Surjit Singh fired at my brother Harmesh Kumar Mukhija with his 12 bore gun, which hit

him on forehead and head. We lay ourselves near the seat while raising alarm of Mar Ditta and all these three tried to run out of shop. Chinderpal

tried to catch hold of Surjit, then Happy fired with his pistol at Chinderpal which hit him on right side of his neck. He fell down there. We also

came out running. Two more persons were also standing outside the shop, whom we can recognise if they came before us. All live (five ?)

alongwith their weapons went towards Dana Mandi while raising lalkaras. This conspiracy of this case has been hatched by Sital Singh M.L.A. We

have old enmity with Gurbux Singh @ Kukku and Sital Singh MLA. We have cases also pending against each other. We tried to take care of

Harmesh and Chinderpal but Harmesh could not bear the injury and died on the spot. My brother Milkha Singh who is having a shop nearby also

came there on hearing the noise. He was left near the dead body and Chinderpal was sent to Civil Hospital Dharamkot after arranging a vehicle

and I alongwith Rajpal son of Milkha Singh resident of Deh have come here to inform you. Action be taken. Harmesh Kumar is having cases under

Sections 302 IPC and 307 IPC and other cases pending with Sital Singh MLA.

3. Shri R.S. Ghai, learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner has been involved in this case due to

enmity with the complainant party. He submitted that the petitioner was in custody in an excise case and was arrested by the Ludhiana police on

12.11.2000 at 3.45 P.M. He further submitted that petitioner was medically examined on the next day at 12.55 P.M. and was produced before

the illaqa magistrate at 3.40 P.M. He submitted that the occurrence in this case is alleged to have been occurred at 9.35 A.M. on 13.11.2000. He

submitted that when the petitioner is in custody then there is no question of participating the petitioner in the occurrence.

4. On the other hand Shri Rajan Quota, learned counsel appearing for the CBI submitted that this case has a long history and the crime has been

committed in connivance with the Punjab police. He submitted that the police has created false documents to help the petitioner. He submitted that

when the investigation was not being properly conducted by the Punjab police then Smt. Parkash Kaur Mukhija wife of the deceased moved a

petition in this Court and this Court vide order dated 22.2.2001 directed the CBI to hold investigation. He submitted that during the investigation, it

has been found that the rojnamcha of police station Sadar Ludhiana has been tampered with. He pointed out that in the police lock up there was

one person by the name of Sanjeev Kumar who was detained u/s 302 IPC and DDR No. 1 also depict the same. There was no other person

detained by the police but subsequently name of Gurbux Singh has been incorporated in DDR No. 1 showing him to be in custody under Excise

Act. He further pointed out that the Punjab police has even forgotten to see in hurry that the offence under which Gurbux Singh has been detained

is bailable one, He further pointed out that DDR Nos. 1 and 15 have been fabricated with an intention of screening offender Gurbux Singh from

legal punishment. He submitted that as per the police when the petitioner was detained he was taken to the civil hospital for medical examination at

12.15 P.M. but there is no entry in the rojnamcha to the effect that petitioner was taken for medical examination. He submitted that as per rules if

any person who is in custody need to be taken to the hospital or somewhere else then there must be an entry in the rojnamcha.

4. Learned counsel further pointed out that the CBI during investigation has collected evidence against the petitioner that he has committed

murder. He further pointed out that Sanjeev Kumar who is in custody in a case u/s 302 IPC and two SPOs working as San-tries in police station

Sadar Ludhiana made a statement that there was no person in the police lock upon 12/13.11.2000 by the name of Gurbux Singh. He further

pointed out that in the FIR the name of the petitioner finds mention. It also finds mention in the FIR that petitioner has fired shot upon Harmesh

Mukhija as a result of which he died and the persons who have witnessed the occurrence have also made a statement to that effect and out of the

witnesses one is the gunman of Harmesh Kumar Mukhija. In the last, he submitted that it is not a case where the petitioner should be granted bail

u/s 438 Cr.P.C.

5. I have considered the submission made by the learned counsel for the parties and perused the record.

6. The Apex Court in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, has laid down the following guidelines for granting bail :

In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior

motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of

his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the

order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true.

That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be

actuated by mala fides; and equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other

considerations, too numerous to enumerate, the combined effect of which must weigh with the Court while granting or rejecting anticipatory bail.

The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility

of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of

the public or the State"" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The

relevance of these considerations was pointed out in The State Vs. Captain Jagjit Singh, which, though was a case under the old S. 498 which

corresponds to the present S. 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for

the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the

presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to

impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

7. In view of the guidelines laid down in the above said judgment, this is not a fit case where the provisions of Section 438 Cr.P.C. are to be

invoked. There are serious allegations against the petitioner that he has fired a shot upon Harmesh Kumar Mukhija as a result of which he had

died. There are specific allegations against the Punjab police that it is helping the petitioner and tampering with the evidence and is also creating

evidence in favour of the petitioner with an intention to screen him from legal punishment. In such like cases of heinous crimes, the petitioner is not

entitled to the benefit of pre-arrest bail. In the instant case, the name of the petitioner has been mentioned as an assailant and there are eye

witnesses to the occurrence. When the investigation was handed over to the CBI, the CBI has also collected evidence in the shape of the

statement of Sanjeev Kumar and two SPOs working as San tries, who have made a statement that no person by the name of Gurbux Singh was

brought in police lock up on 12/13.11.2000. I have also perused the DDR No. 1 dated 13.11.2000 and 15.11.2000 but there is no entry in the

DDR that the petitioner was taken to Civil Hospital, Ludhiana for medical examination. So, taking into consideration the allegations levelled against

the petitioner, the custodial interrogation in such like cases is necessary for just and proper investigation as it has been laid down instate Rep. by

the State Rep. by the C.B.I. Vs. Anil Sharma, the Apex Court has held as under :-

that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favourable order u/s

438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disintering many useful informations

and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well

protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a

mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not

be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police

Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct

themselves as offenders.

High Court has approached the issue as though it was considering a prayer for granting regular bail after arrest. Learned Single Judge of the High

Court reminded himself of the principle that ""it is well-settled that bail and not jail is a normal course"".

8. for the reasons mentioned above, finding no merit in the petition, the same is hereby dismissed.

9. Petition dismissed