

**Mohinder Singh Vs. the State**

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**Court :** Delhi

**Decided On :** Nov-11-1983

**Reported in :** 25(1984)DLT161

**Judge :** M.L. Jain, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 506; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 107, 116(6) and 150

**Appeal No. :** Criminal Miscellaneous Appeal No. 24 of 1983

**Appellant :** Mohinder Singh

**Respondent :** The State

**Advocate for Pet/Ap. :** P.S. Girdhar,; Usha Kumari,; K.K. Sud and;

**Judgement :**

**M.L. Jain, J.**

(1) This order will dispose of Cr.M.(M) 24 of 1983 and Cr.M.(M) 75 of 1983.

(2) The brief facts are that Mohinder Singh's daughter, Pramjit Kaur was married to Paramjit Singh son of Mal Singh. But Mal Singh and his two sons were annoyed with her because of insufficient dowry. Sometime after this marriage, the marriage of Baijit Singh son of Babu Singh a nephew of Mohinder Singh took place in

Fazilka on 31-10-1982 which was attended by Paramjit Singh, s/o Mal Singh. The marriage party returned on 1-11-1982. Mohinder Singh had come from his village in Punjab to the house of Babu Singh in Ashok Vihar in connection with the said marriage. The accused persons, namely Mal Singh and his two sons Swaran Singh and Sikandar Singh came there at 11.15 a.m. and complained to Mohinder Singh that he had not given appropriate dowry and that at his instance Paramjit Singh attended the marriage of Babu Singh's son, much against wishes of Mal Singh. The three accused then attacked Mohinder Singh. Karak Singh and Chanchal Singh intervened. Mal Singh said that they too would be done to death and immediately started firing his rifle as a result of which Karak Singh fell dead on the spot. Chanchal Singh was attacked by Sikandar Singh with a Khukri and Malkiyat Singh by Swaran Singh with a pole axe. A case under section 302 Ipc was registered against them.

(3) The learned Addl. Sessions Judge Mr. G.S. Dhaka by his order dated 7-1-1983 held that though there was no intention to cause the death of Kharak Singh nor was he a target nor was any threat given to him and, therefore, enlarged them on bail bonds in the amount of Rs. 10,000.00 . On 12-1-1983 the complainant Mohinder Singh and the injured Chanchal Singh and Smt. Baijit Kaur widow of Kharak Singh moved an application for cancellation of the aforesaid bail. On 28-1-1983 the Delhi Administration has also moved a similar application. Since then challan has been filed and charges have been framed against the accused.

(4) When the matter came up for hearing on 5-8-1983 Talwar J. observed that the State ought to have in the first instance moved their application before the Addl. Sessions Judge. Accordingly, the decision of the two petitions was deferred and the parties were directed to move the court of the Adll. Sessions Judge. An application for cancellation of bail was then moved before the Addl. Sessions Judge Mr. Dakha. Mr. Dakha sent the application on 30-8-83 to the Sessions Judge for transferring the application to the court of Mr. P.S. Sharma who was by now trying the case. But the learned Sessions Judge by his order dated 1-9-1983 transferred the application to the court of Mr. Dakha. Mr. Dakhy by his order dated 5-9-1983 refused to cancel the bail. He was of the view that after the bail was granted no untoward incident has happened except Fir 32/83 dated 19-1-1983

lodged against the accused in Ps Subzi Mandi. There is no likelihood of tampering with the witnesses by the accused. The said Fir was lodged on 19-1-1983 under section 506 Ipg by Chanchal Singh that he was working in his transport office when the accused Mal Singh and his son Swaran Singh came and threatened him that he had escaped at the time of the occurrence, but would not be spared any more and that they will also see the other witnesses. Swaran Singh even took out a country-made pistol. Chanchal Singh bagged them to spare him and his witnesses. Thereupon Swaran Singh and Mal Singh left the place. It also appears that on 27-1-1983 a case was registered against Mal Singh and Swaran Singh in Subzi Mandi Police Station under section 107/150 Cr.P.C. These proceedings were dropped on 3-8-1983 because six months had elapsed from the institution of the proceedings, vide sub-section (6) of section 116 Cr. P.C.

(5) It is urged in these applications that (1) the order of bail was not justified and it should therefore, be quashed and (2) in any case the respondents have misused the liberty granted to them and, therefore, their bails should be cancelled

(6) Dealing with the grant and cancellation of bail, the Supreme Court in Gurcharan Singh and others v. State (Delhi Admn.) Air 1978 Sc 179, laid down that these are matters pertaining to judicial discretion to be exercised on valid grounds. The over-riding considerations in granting bail are the nature and gravity of the circumstances in which the offence is committed ; the position and the status of the accused with reference to the victim and the witnesses ; the likelihood of the accused fleeing from justice; of repeating the offences of jeopardising his own life being faced with a grim prospect of possible conviction in the case ; of tampering with witnesses ; the history of the cases as well as of its investigation and other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out. The question of cancellation of bail is certainly different from admission to bail. Ordinarily, the High Court will not interfere with an order of bail granted by the Sessions Judge in favor of the accused. The court has to see whether the order granting bail was vitiated by any serious infirmity for which it was right and proper for the High Court to interfere in the interests of justice. It is essential that due and proper weight should be bestowed on two paramount considerations, viz. likelihood of the accused fleeing from justice and his tampering

with prosecution evidence. In *State v. Sanjay Gandhi*, : 1978 CriLJ952 , it was observed that it is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, be reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. A bail once granted cannot be cancelled on the off chance or on the supposition that witnesses have been won over by the accused. But in an application for cancellation of bail the prosecution can establish its case by showing on a preponderance of probabilities and not beyond reasonable doubt that the accused has attempted to tamper or has tampered with its witnesses, has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice. If the accused has abused this liberty by attempting to suborn the prosecution witnesses, has forfeited his right to remain free. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extraordinary nature, is meant to be exercised in appropriate cases and refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of judicial process. Also see *Public Prosecutor v. George Williams*, : AIR1951 Mad1042 , *Sita Ram Singh and others v. The State of Bihar* and another 1973 Cr. L.J. 384, *State v. Ranjit Singh* : 14(1978)DLT185 , *Gokul Das v. The State of Assam* and *State, v. Jitendra Chopra and another*, : 18(1980)DLT137 .

(7) It is contended that the learned Addl, Sessions Judge was wrong in saying that it was not a case of murder and, therefore, the order of granting bail was misconceived and unjustified. I think this contention is correct.

(8) As regards the second contention that the respondent accused were misusing the liberty, the prosecution relies upon Fir No. 32/83 and the proceedings under section 107/150 Cr.P.C. Mr. Sud submitted that the Fir 32/83 was mala fide and without any basis. It was lodged after the application for cancellation was made and in a police station where the complainant has great influence. Mal Singh happened to be in Delhi on 25.1.1983 and was even arrested in a case under

section 506 Indian Penal Code by the Subzi Mandi Police. As regards the proceedings under sections 107/150 Cr.P.C. the learned counsel pointed out that the proceedings had to be closed because the witnesses did not turn up. The prosecution has so far only made vague allegations. That apart, the accused Swaran Singh is aged 21 years, Sikandar Singh aged 20 years and Mal Singh aged 65 years and they did not live in Delhi to ensure that the opposite party does not create any false ground for seeking cancellation of bail. I have considered this aspect and it appears to me that the accused Mal Singh and Swaran Singh have misused the liberty and that they did not hesitate to threaten the witnesses even after there was move for cancellation of their bail. There is no such allegation against Sikandar Singh. The second ground, therefore, has also got to be upheld against the accused except Sikandar Singh.

(9) I, therefore, direct that the accused Mal Singh and Swaran Singh shall be arrested and committed to custody in jail. Their bail bonds shall stand cancelled and they shall forthwith surrender in the trial court. The petitions stand disposed of accordingly. This order will, however not preclude them from making a fresh application for bail as and when so advised.