

Registrar, Moga based on the Audit report for the year 2005 had recorded a foregone conclusion and the authorities have proceeded to accept the report. At the time of preparation of report by the Sub Registrar neither any notice was issued to the petitioners nor they were allowed to file objections against the report. It has also caused prejudice to the interest of the petitioners.

(10) For the reasons, aforementioned this petition succeeds and the impugned orders dated 29th April, 2005 (Annexure P-2) passed by the Additional Deputy Commissioner-cum-Collector, Moga and 30th January, 2007 (Annexure P-4) passed by the Commissioner, Ferozeour Division, Ferozepur, are hereby set aside.

R.N.R.

Before M. M. Kumar and Sabina, JJ.

RANINDER SINGH AND ANOTHER,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 10119 of 2007

28th May, 2008

Constitution of India, 1950—Art. 21 & 226—Code of Criminal Procedure, 1973—S. 438—Grant of anticipatory bail—Registration of cases against petitioners—Allegations of political rivalry against respondent No. 4—Whether petitioners could be granted extra ordinary relief of issuing them a notice of a specified period so as to enable them to avail appropriate legal remedy—Held, yes.

Held, that it cannot be disputed that there is political rivalry between the family of the petitioners and respondent No. 4. The aforementioned conclusion has further been supported from the fact that in the instant petition a number of allegations of political vendetta have been levelled against respondent No. 4 and despite service no affidavit has been filed rebutting those allegations. It is needless to observe that

such allegations cannot be rebutted by a person other than the one against whom such allegations have been levelled. Therefore, the affidavit dated 15th October, 2007 filed by Additional Secretary, Vigilance, Government Punjab, cannot be considered sufficient refutation of those allegations because it lies in the personal knowledge of respondent No. 4.

(Para 25)

Further held, that the petitioners are unlikely to flee from law even if some FIR is registered against them. As such, they do not have criminal record. Once the aforementioned analysis has been done then the question arises should we allow the personal liberty of the petitioners to be violated first and then restore it or we should take notice of certain overt acts full of political overtones and vindictiveness ? During last about 11 months no other case 'as on date' has been registered is the stock reply. Instead of granting some relief to the petitioners would it be proper course to tell the petitioners that Court cannot take any action towards preventive justice ? We believe that we should be inclined to protect the personal liberty of citizens given to them by Article 21 of the constitution.

(Para 29)

Further held, that taking into account various facts including the political rivalry, press statements made by respondent No. 4 and his son; and the treatment meted out to Bharat Inder Singh Chahal in case FIR No. 5 dated 23rd March, 2007 we are persuaded to grant them some relief to, especially in view of the observations made by Hon'ble the Supreme Court in the case of S.M.D. Kiran Pasha versus Government of Andhra Pradesh (1990) 1 SCC 328.

(Para 28)

Atul Nanda, Advocate, with Puneet Bali, Advocate, *for the petitioners.*

R.S. Khosla, Addl. Advocate General, Punjab, *for the respondents.*

M.M. KUMAR, J.

(1) This case reveals political overtones in the State of Punjab between two groups of political leadership. The instant petition has been filed under Article 226/227 of the Constitution for issuance of direction to the respondents that ten days notice be given to the petitioners in any case to be registered against them anywhere in the State of Punjab.

(2) Some facts would be necessary for putting the controversy in its true perspective. Raninder Singh-petitioner No. 1 is the son of a former Chief Minister of Punjab Capt. Amarinder Singh. Raminder Singh Thakhar-petitioner No. 2 is a close relation of the former Chief Minister being the son-in-law of Raja Randhir Singh, who is cousin brother of Capt. Amarinder Singh. Shri Parkash Singh Badal-respondent No. 4, was the Chief Minister of Punjab from February 1997 to February 2002, whereas Capt. Amarinder Singh, father of petitioner No. 1, became the Chief Minister thereafter. After the elections of the Punjab State Legislative Assembly, held on 13th February, 2007, Shri Parkash Singh Badal-respondent No. 4 again became Chief Minister in the State of Punjab. The allegations made by the petitioners have to be examined in the light of the aforementioned outlined facts.

(3) The petitioners have made following allegations. They have alleged that the political and personal rivalry between the family of Shri Parkash Singh Badal-respondent No. 4, the present Chief Minister and the family of the petitioners date back to the late 1990's. In para 5 of the petition it has been alleged that when Shri Parkash Singh Badal-respondent No. 4 came to power as Chief Minister of Punjab from February 1997 to February 2002. The State of Punjab, which had then recovered from the debilitating effects of terrorism and it was going through a phase of rampant political corruption. There was rampant corruption, bribery and gratification of public offices, which was an intrinsic part of common Government functions such as recruitment of officers, transfers, postings, development projects, Government tenders etc., which resulted into shifting of several industries from Punjab to neighbouring States. It was at that time that Capt. Amarinder Singh was appointed as President of the Punjab Pradesh Congress Committee and

brought the issues of corruption, transparency and public accountability into an open forum. In the general elections of the Punjab Legislative Assembly held in January/February 2002, this was the core issue and after winning the elections Capt. Amarinder Singh found himself effectively translated into an arch political rival of Shri Parkash Singh Badal-respondent No. 4. He assumed charge as a Chief Minister of Punjab on 26th February, 2002. After his installation as Chief Minister, he started inquiry into various corrupt acts of the officials and Ministers of the previous Parkash Singh Badal's Government. Even cases under Prevention of Corruption Act, 1988, were registered against Shri Parkash Singh Badal-respondent No. 4 & his son and reports under Section 173 Cr. P.C. were filed; and a Special Fast Track Court headed by a Special Judge at Ropar was created to deal with the cases arising out of corruption. The notification dated 17th November, 2003, setting up Special Court to deal with corruption cases, was challenged by Shri Parkash Singh Badal-respondent No. 4, which was repelled by this Court in C.W.P. No. 9410 of 2004, decided on 2nd September, 2004. Even the Special Leave Petition was dismissed by Hon'ble the Supreme Court by a detailed judgment dated 6th December, 2006 (now reported as **Parkash Singh Badal versus State of Punjab (1)**). It has been pointed out that during the tenure of Capt. Amarinder Singh as Chief Minister, the police machinery was never used in a manner to harass Shri Parkash Singh Badal-respondent No. 4 or his family members nor they were ever arrested during investigation.

(4) On account of various cases instituted by Capt. Amarinder Singh, the father of petitioner No. 1 and close relation of petitioner No. 2, a spate of cases have been registered against the family of the petitioners, which emanate from the political vendetta and out of personal vindictiveness. It has been alleged that the State policing authorities, especially the Vigilance Bureau has been used to launch a tirade of false cases and action against the petitioners by arresting them with the object of torturing and publically humiliating them. The object is not to segregate the accused by bringing them within the four corners of law but it is to seek recompense and revenge for the fact that Capt. Amarinder Singh and his Government had instituted inquires into the

(1) (2007)1 S.C.C. 1.

corrupt acts of Shri Parkash Singh Badal-respondent No. 4 and his family members. The trial is still going on in the Court of Special Judge, Ropar. On the basis of the aforementioned allegations, a grave and serious apprehension has been expressed by the petitioners that they are likely to be involved in false cases with oblique motives. In support of their allegations, the petitioners have placed on record various Press Notes as Annexure P-1 (Collectively).

(5) It has also been alleged that during the election campaign Shri Parkash Singh Badal-respondent No. 4 had given it as a election promise that if he and his family members are returned to power, they would arrest and drag each and every member of the petitioners' family behind bars and teach them a lesson. The petitioners have claimed that these statements have been documented by the press and electronic media and are within the public domain. There are then allegations emanating from the infamous scandal concerning scandal of land by Ludhiana Improvement Trust and an FIR No. 5, dated 23rd March, 2007, has been registered against Capt. Amarinder Singh, the father of Petitioner No. 1. The petitioners have claimed that Capt. Amarinder Singh had ordered an inquiry to be conducted by the Vigilance Bureau, who submitted a detailed report, cataloguing the entire tender process and arriving at a finding of liability against officials of the Ludhiana Improvement Trust and that he had dissolved the Trust. But despite that an FIR was registered being FIR No. 5, dated 23rd March, 2007, under Sections 409, 420, 467, 468, 471, 120-B IPC read with Sections 7, 13(1)(c)(d), 13(2) and 14 of the Prevention of Corruption Act, 1988. It is further alleged that at the instance of Shri Parkash Singh Badal-respondent No. 4, search warrants were sought for the search of the residence of Capt. Amarinder Singh and his wife.

(6) Apprehending arrest, Capt. Amarinder Singh filed a petition in this Court bearing Criminal Miscellaneous No. 21713-M of 2007, under Section 438 Cr. P.C. for grant of anticipatory bail in case FIR No. 5, dated 23rd March, 2007. He was given interim bail, vide order dated 30th March, 2007 (P-2). The Special Petition (Criminal) No. 3477 of 2007, against the interim order was dismissed by Hon'ble the Supreme Court on 18th June, 2007 (P-3). The petitioners also filed an application for pre-arrest bail, bearing Criminal Miscellaneous

No. 33867-M of 2007 in case FIR No. 5, dated 23rd March, 2007, which was granted on 24th May, 2007 (P-4). It is pertinent to notice that in the order dated 24th May, 2007 (P-4), the political rivalry between the family of the petitioners and Shri Parkash Singh Badal-respondent No. 4, has been noticed and the learned Judge has declined the custodial interrogation on the ground that the investigation was not being carried by an impartial agency like CBI.

(7) The petitioners have also made a reference to the Punjab Intranet Company case wherein it has been alleged that petitioner No. 1 is having dubious hawala links and transactions. On the basis of allegations made Shri Parkash Singh Badal-respondent No. 4 a communication was sent to the erstwhile Government at the Centre, headed by Shri Atal Bihari Vajpayee. Thereafter, investigation was initiated by the Enforcement Directorate. At that point of time, Capt. Amarinder Singh himself appointed a Commission of Inquiry under Section 3 of the Commission of Inquiries Act, 1952, headed by Justice B.S. Nehra, a retired Judge of the Punjab and Haryana High Court. The Commission in its detailed report concluded that the documents relating to the allegations against the petitioners were fabricated. Even the aforementioned report of Justice Nehra's Commission was challenged by filing C.W.P. No. 1487 of 2006 in this Court. The writ petition was dismissed and the Division Bench in the concluding para of the judgment noticed that filing of the writ petition was not an act of innocence and preferred to observe judicial restraint.

(8) The petitioners have also levelled allegations that the Vigilance Bureau has been packed with such officers who are compliant to the orders of Shri Parkash Singh Badal-respondent No. 4, which has been done by ignoring the provisions of the State Vigilance Commission Act, 2006 and the direction issued in the case of Parkash Singh Badal (supra). In fact, the State Vigilance Commission Act, 2006, has been repealed. By doing all these acts, the police officers of the Vigilance Bureau have been fabricating evidence against the petitioners, their associates and family members, which supports their grave and serious apprehension that they would be involved in false cases for the purpose of humiliating them for political reasons.

(9) The petitioners have also listed few cases where third degree methods have been adopted by the police officers at the instance of the respondents. The case of Bharat Inder Singh Chahal, who was Media Advisor of the then Chief Minister Capt. Amarinder Singh, has been cited. Bharat Inder Singh Chahal had approached this Court by filing Criminal Miscellaneous No. 35545-M of 2007. On 1st June, 2007 (P-7), this Court has passed the following orders :-

“In this background, when the petition has been filed under Section 482 Cr. P.C. I do not find any legal impediment in granting some temporary relief to the Petitioner particularly when this Court is closed for summer vacations, till re-opening, while directing that he shall not be arrested in any case by the Punjab Vigilance Bureau without giving him four day’s notice in advance so that he could file anticipatory bail before the competent Court. Accordingly, the petition is disposed of with the aforesaid limited direction which shall continue only till 4th July, 2007.”

(10) The petitioners have further highlighted that the respondents deliberately and falsely fabricated a case against Bharat Inder Singh Chahal under Section 307 IPC, registered by the Punjab Police, so as to by-pass the protection given to him by this Court in case FIR No. 105, dated 10th June, 2007. Bharat Inder Singh Chahal reported to the office of the Vigilance Bureau, Ludhiana to associate himself with the investigation and he was arrested at 5.30 p.m. by the Punjab Police from the office of the Vigilance Bureau as the direction was only to the Punjab Vigilance Bureau to issue notice of four days, the case FIR No. 126, dated 12th June, 2007, under Sections 384/406/420/467/468/471 IPC was registered against Bharat Inder Singh Chahal at Police Station Civil Lines, Patiala. Another case was registered *vide* FIR No. 227, dated 13th June, 2007, under Sections 406/420/506 IPC at Police Station Kotwali, Patiala. He was given police remand in case FIR No. 126, dated 12th June, 2007. Bharat Inder Singh Chahal then filed C.W.P. No. 9434 of 2007 and this Court issued direction to the respondent State to give him four days notice in any case to be registered against him. The petitioners have alleged that Bharat Inder Singh Chahal was physically tortured. When Bharat Inder Singh Chahal appeared before

the trial Court on 14th June, 2007, he made a specific statement alleging that he was taken to CIA's office on 12th June, 2007 where his legs were dragged apart and electric shocks were given to his private parts. He was dragged by his long hair and one ASI was deputed to slap him. Before the trial Court Bharat Inder Singh Chahal begged for death rather than tolerating torture and humiliation. Thereafter the trial Court refused police remand and sent Bharat Inder Singh Chahal to judicial custody. The order of the trial Court, dated 14th June, 2007, has been placed on record as Annexure P-8. This Court took up C.W.P. No. 9434 of 2007 and while issuing notice of motion passed order dated 15th June, 2007, which reads thus :-

“Insofar as the apprehension of the petitioner that he is likely to be arrested in FIRs that are to be registered against him in future, the matter is kept open to be decided at the final hearing of the petition. However, as an interim measure and keeping in view the spirit of the order dated 1st June, 2007 (Annexure P-14) passed by this Court and also keeping in view the nature of the allegations that have been made that FIRs have been registered against the petitioner one after the other on 10th June, 2006 (Annexure P-16), on 12th June, 2007 (Annexure P-30) and on 13th June, 2007 (Annexure P-31) it would be just and expedient that the petitioner till 4th July, 2007 shall not be arrested in any case by the Punjab Police to be registered in future without giving him four days' notice in advance. This interim direction shall continue only till 4th July, 2007. This interim arrangement would, however, be subject to the order, if any, passed by the Supreme Court of India in the SLP filed against the order dated 1st June, 2007 (Annexure P-14).

The prayer for interim relief stands disposed of accordingly.

List for hearing on 4th July, 2007. Meanwhile, the respondents may file their replies with advance copy to the learned counsel for the petitioners.” (Emphasis added).

The Special Leave Petition directed against the
aforementioned order was also dismissed on 18th June,
2007 (P-10).

(11) The petitioners have also levelled allegation against the Inspector General of Vigilance Shri Sumedh Saini. It has been alleged that Shri Sumedh Saini takes instructions from Shri Parkash Singh Badal-respondent No. 4 and his son Shri Sukhbir Singh Badal and that he has been charge sheeted by the Central Bureau of Investigation for wrongful detention of three persons. Some reference has also been made to the report of the International Human Rights Organisation concluding that he indulged in torture of persons in custody (P-11). Accordingly, it has been submitted that case FIR No. 5, dated 23rd March, 2007, is being investigated by officers whose profile and instructions are to arrest the petitioners and their family members with the object of subjecting them to Police torture as a programme of political vendetta. The petitioners have filed Criminal Miscellaneous No. 38178-M of 2007 for grant of anticipatory bail and issuance of 10 days notice in the event of their arrest in the event of any case being registered, as has been noticed in the preceding para. In reply to the above mentioned petition, an affidavit has been filed by the Punjab Vigilance Bureau stating that no other case except FIR No. 5, dated 23rd March, 2007 has been registered with the Vigilance Bureau against the petitioners as on date. The aforementioned affidavit was filed by Shri Kanwarjit Singh Sandhu, Senior Superintendent of Police, Vigilance Bureau, Ludhiana on 4th July, 2007 (P-15).

(12) When the matter came up for consideration before this Court after notice and reply on 15th October, 2007, it was indicated to the Court that the petitioners were not associating themselves with the investigation in case FIR No. 5, dated 23rd March, 2007. Accordingly, the petitioners were directed to appear before the investigating officer on 22nd and 29th of October, 2007 and 5th November, 2007 at 10 a.m. in the office of Vigilance Bureau Ludhiana. It was further clarified that if the Punjab Police or the Vigilance Bureau want to arrest the petitioners in connection with some other case then three days notice

was required to be given to the petitioners. The aforementioned order dated 15th October, 2007 reads thus :-

“ Reply filed in the Court today is taken on record. Copy has been given to the counsel for the petitioners.

Shri Khosla appearing on behalf of the State of Punjab states that till date, except FIR No. 5 dated 23rd March, 2007, there is no other case pending against the petitioners. He further submits that in the FIR, the petitioners are on anticipatory bail. He further submits that in terms of the conditions of the anticipatory bail, the petitioners are not appearing before the Investigating Officer in spite of writing letters to them but the counsel for the petitioners states that no such letter had been received by the petitioners and that the petitioners are ready to appear before the Investigating Officer in that in case on the dates fixed by this Court. Shri Khosla states that three dates be fixed for appearance of the petitioners before the Investigating Officer.

Therefore, the petitioners shall appear before the Investigating Officer on 22nd and 29th of October, 2007 and 5th November, 2007 at 10 A.M. in the office of Vigilance Bureau, Ludhiana. In the mean while, if the Punjab Police or the Vigilance Bureau wants to arrest the petitioners in connection with some other case, three days notice will be given to the petitioners.

The main case is adjourned to 12th November, 2007 for arguments.”

(13) This order although has been complied with as the petitioners had appeared before the Investigating Officer on the specified dates but interim directions have been continuing till date, as is evident from the perusal of order dated 12th November, 2007.

(14) Written statement dated 20th July, 2007 and an affidavit dated 15th October, 2007, by Shri Prithi Chand, Additional Secretary, Vigilance Government of Punjab, have been filed on behalf of respondent

No. 1. However, despite service, Shri Parkash Singh Badal-respondent No. 4 has not preferred to file any reply or affidavit refuting a number of allegations made against him in his personal capacity.

(15) In the parawise reply filed by respondent No. 1, the conduct of the petitioners of not appearing before the Investigating Officer in case FIR No. 5, dated 23rd March, 2007, has been highlighted. It has further been asserted that the investigation of crime is made in accordance with law and not on the basis of instruction from any quarter whatsoever. Substantiating that the Police in the respondent State is working independently of any influence, respondent No. 1 has claimed that the names of the petitioners were not mentioned in the original FIR and their names were included when during the course of investigation some allegations were found. The allegations that the petitioners are being harassed and humiliated have been refuted. It has, however, been conceded that there is no case pending against the petitioner except case FIR No. 5, dated 23rd March, 2007. It is claimed that the petitioners were involved in some other offences as revealed by Harpreet Singh Sandhu, who was taken into custody in the case concerning Ludhiana City Centre Scam. Therefore, the investigating agency is trying to find out whether it is hawala transaction or there is any other issue relating to the Ludhiana City Centre Scam. It has been asserted that they are definitely source of information and investigation by the Vigilance Bureau. It is claimed that the co-accused has made an admission and; that the petitioners and Capt. Amarinder Singh have made public statements attempting to tarnish the image of the Investigating Officers. It is claimed that the investigation is being carried on in a fair manner without fear or favour.

RIVAL CONTENTIONS :

(16) Mr. Atul Nanda and Mr. Puneet Bali, learned counsel for the petitioners have argued that once such a grave enmity, political vendetta and rivalry exist between the family of the petitioners and the family of the present Chief Minister Shri Parkash Singh Badal-respondent No. 4 then it is imperative that the personal liberty of the petitioners be protected rather than permitting the same to be first violated and then granting it to the petitioners. In that regard, they have placed

reliance on a judgment of Hon'ble the Supreme Court in the case of **S.M.D. Kiran Pasha versus Government of Andhra Pradesh (2)**. According to the learned counsel when a right is yet to be violated but there is a real threat, which is especially afflicted with political vendetta then a citizen must be granted protection of his right. Learned counsel then submitted that this Court must restrain the potential violator of such rights from taking any steps towards violation which can be the proper way to ensure the protection of that right. Substantiating their arguments concerning political vendetta, learned counsel have placed reliance on order dated 24th May, 2007, passed by this Court in Criminal Miscellaneous No. 33867-M of 2007 where findings have been recorded regarding political vendetta between the petitioner's family and Shri Parkash Singh Badal's family. Learned counsel have also referred to the order dated 19th November, 2007, passed by Hon'ble the Supreme Court upholding the view taken by this Court, dismissing SLP (Crl.) No. 3433 of 2007. Learned counsel have maintained that despite the fact that specific prayer for expunging of the aforementioned findings and comments was made, these findings have been kept intact. Learned counsel have then relied upon the observations made by this Court in the order dated 30th July, 2007, passed in Criminal Miscellaneous No. 21713-M of 2007, which was filed by the father of Petitioner No. 1 Capt. Amarinder Singh alongwith another. Learned counsel have pointed out to the concluding three paras of the order where it has been noticed that the father of Petitioner No. 1 is a political rival of the present Government in the State and the SLP against the aforementioned order has also been dismissed. They have also made a reference to the order dated 1st October, 2007, passed in Criminal Miscellaneous No. 32475-M of 2007 and other connected application filed under Section 438 Cr. P.C.

(17) Learned counsel have also argued that there is no complete bar for grant of protection of primary fundamental rights of the petitioners guaranteed by Article 21 of the Constitution by directing the State to issue them notice of 10 days before actually arresting them. In that regard, they have placed reliance on another order passed by this Court in Criminal Miscellaneous No. 35545-M of 2007 (P-7). In that case,

(2) (1990)1 S.C.C. 328

this Court has granted relief to Bharat Inder Singh Chahal that he was not to be arrested in any case by the Punjab Vigilance Bureau without giving him four days' notice in advance so that he could file anticipatory bail before the competent Court and those directions were to be continued till the reopening of the Court i.e. till 4th July, 2007. The aforementioned order was challenged before Hon'ble the Supreme Court in SLP (Crl.) No. 3475 of 2007, which was dismissed on 18th June, 2007 (P-10).

(18) Learned counsel for the petitioners have then referred to the judgment of Hon'ble the Supreme Court in the case of **State of Maharashtra versus Mohd. Rashid (3)**, and argued that although no blanket order restraining the police from arresting an accused on the basis of an FIR could be passed ordinarily, yet, it would depend on the facts and circumstances of each case. According to the learned counsel, Mohd. Rashid's case (supra) was without any political overtones and there was no *mala fide*. They have maintained that had it been malicious and afflicted with political vendetta, the Supreme Court would have taken the view as has been taken by dismissing the Special Leave petition on 18th June, 2007 (P-10) and upholding order dated 1st June, 2007 (P-7) passed by this Court. Therefore, it has been submitted that the judgment in Mohd. Rashid's case (supra) has no bearing on the facts of the present case.

(19) Mr. R.S. Khosla, learned State counsel has argued that the issue is required to be examined in a wider perspective without confining to the facts of the present case. According to the learned counsel if a prospective accused is armed with blanket order against his arrest then it would amount to completely ignoring the right of the investigating agency to investigate the crime and the vital evidence could be removed or tampered with by the prospective accused. Learned counsel has maintained that it was keeping in view the aforementioned principles that Hon'ble the Supreme Court in Mohd. Rashid's case (supra) has refused to concur with the view taken by the Bombay High Court requiring the police to issue 4 days clear notice to the accused in case an FIR disclosing the commission of cognizable offence by a

prospective accused is registered. Learned counsel has maintained that once the petitioners in the present case are already in dock on the allegations made against them in case FIR No. 5, dated 23rd March, 2007, it cannot be said that they will not commit such like offences in the times to come.

CONCLUSIONS :

(20) We have thoughtfully considered and reflected on the submissions made by the learned counsel for the parties and have also gone through the minute details by perusing the paper book. It is appropriate to notice that the necessity for making provisions for grant of anticipatory bail had arisen on account of the fact that influential persons tried to implicate their rivals in false cases for the purpose of disgracing them or to achieve some oblique motives. The Law Commission in its 41st Report has taken note of those facts to which reference has also been made by the Constitution Bench of Hon'ble the Supreme Court in the case of **Gurbaksh Singh Sibbia versus State of Punjab (4)**. It would be appropriate to notice para 39.9 of 41st Report of the Law Commission, which reads thus :-

“The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in person for days and then apply for bail.”

(21) In the context of granting anticipatory bail, their Lordships' in Gurbaksh Singh Sibbia's case (*supra*) have held that if the allegations forming basis of an FIR have been levelled to achieve an oblique motive like lowering the reputation of the accused or tarnishing his image in public eye, then it may be an important consideration for

(4) (1980)2 S.C.C. 565

favourable disposal of the case of such an accused under Section 438 of the Code. It has further been observed that if the antecedents of the accused are such that he is unlikely to flee from the process of law or to misuse the same, then a favourable order could be passed. The observations of Hon'ble the Supreme Court in Gurbaksh Singh Sibbia's case (supra) reads thus :-

“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 free 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.” (emphasis added)

(22) It is not disputed before us that there is a history of political rivalry between the father of petitioner No. 1 and close relation of petitioner No. 2 Capt. Amarinder Singh and Shri Parkash Singh Badal-respondent No. 4. The rivalry goes back to the institution

of cases against Shri Parkash Singh Badal-respondent No. 4 during the regime of Capt. Amarinder Singh, arising out of FIR No. 11, dated 16th May, 2002, under Sections 420, 467, 471, 120-B IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station Vigilance Bureau, Flying Squad-I Mohali, and FIR No. 13, dated 14th June, 2002, under Sections 420, 467, 468, 120-B IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station, Vigilance Bureau, Flying Squad-I, Mohali, which are at the trial stage before the Special Judge, Ropar. Even otherwise this Court on three occasions has concluded about political enmity between them. In order dated 30th July, 2007, passed in Criminal Miscellaneous No. 21713-M of 2007, where the father of petitioner No. 1 Capt. Amarinder Singh has filed a petition under Section 438 Cr. P.C., this Court has concluded as under :-

“.....There was no serious dispute between the parties before me that the petitioners are political rival of the present Government in the State. It is also a matter of fact that petitioner No. 1 as a Chief Minister, had pursued the cases against the present Chief Minister and his son, for which they are facing prosecution in the court of law. Soon after taking over, the constitution of the Vigilance Bureau was changed. The details reference in regard to the political vendetta being persuaded by the parties has been made in the reply filed on behalf of the petitioners. It would be safe to say that respective parties have been acting against each other at different points of time, which may lead to reading something in the present case being registered against the petitioners.”(emphasis added)

The aforementioned order was challenged before Hon’ble the Supreme Court in SLPs (Crl.) No. 5930 of 2007 and the same was dismissed with small modification.

(23) Likewise, when the petitioners filed Criminal Miscellaneous No. 33867-M of 2007, seeking anticipatory bail in case FIR No. 5,

dated 23rd March, 2007, another learned Judge has recorded the following conclusion.

“*Prima facie*, this case, registered by the Punjab Vigilance Bureau, appears to have some political overtones as the persons involved in this FIR are either the members of the family or they belong to a particular circle and a political party. In such cases, there is always an apprehension of custodial violence and humiliations. Had it been a case of an independent investigation by an impartial Agency like C.B.I., the petitioners may have been directed to face custodial interrogations like in the judgments as above. Hence, the CrI. M. No. 33867-M of 2007 is hereby allowed and it is directed that in the event of arrest of the petitioners, they shall be released on bail subject to the following conditions :-

- i) that they shall make themselves available for interrogation by a police officer as and when required ;
- ii) that they shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer ;
- iii) that they shall not leave India without the previous permission of the Court and shall also deposit their passports in the Registry of this Court.

24th May, 2007”

The aforementioned order was challenged before Hon’ble the Supreme Court in Criminal Appeal No. 3433 of 2007 and the appeal was dismissed on 19th November, 2007.

(24) Likewise, in Criminal Miscellaneous Nos. 32475-M of 2007, 32532-M of 2007, 32534-M of 2007, 33035-M of 2007 and

35266-M of 2007, similar observations have been made by yet another learned Judge of this Court (while taking notice of the order dated 30th July, 2007, passed in Criminal Miscellaneous No. 21713 of 2007) in para 30 of the order dated 1st October, 2007, which reads thus :-

“[30] So far as the order dated 30th July, 2007 passed by Ranjit Singh, J. in Captain Amarinder Singh’s case (supra) is concerned this Court *prima facie* took notice of political vendetta against the petitioner(s) and, therefore, rightly invoked the principles laid down by the Constitution bench of the Apex Court in Gurbaksh Singh Sibbia’s case (supra) and granted protection against arrest in the present case, except one of the petitioner (BIS Chahal) non has alleged any political rivalry or any past history of enmity against the present regime.”

(25) In view of the aforementioned factual position it cannot be disputed that there is political rivalry between the family of the petitioners and Shri Parkash Singh Badal-respondent No. 4. The aforementioned conclusion has further been supported from the fact that in the instant petition a number of allegations of political vendetta have been levelled against Shri Parkash Singh Badal-respondent No. 4 and despite service no affidavit has been filed rebutting those allegations. It is needless to observe that such allegations cannot be rebutted by a person other than the one against whom such allegations have been levelled. Therefore, the affidavit dated 15th October, 2007, filed by Shri Pirthi Chand, Additional Secretary, Vigilance, Government of Punjab, cannot be considered sufficient refutation of those allegations because it lies in the personal knowledge of Shri Parkash Singh Badal-respondent No. 4. A similar question has cropped up before a 7 Judges Constitution Bench of Hon’ble the Supreme Court in the case of **Partap Singh versus State of Punjab (5)**, where allegations of *mala fide* were levelled against the then Chief Minister Shri Partap Singh Kairon. No affidavit refuting those allegations was filed by the then Chief Minister and their Lordships’ held as under :-

“14. We shall first take up for consideration the several allegations that have been made and see whether they had been

satisfactorily made out. Before proceeding further it is necessary to state that allegations of a personal character having been made against the Chief Minister, there could only be two ways in which they could be repelled. First, if the allegations were wholly irrelevant, and even if true, would not afford a basis upon which the appellant would be entitled to any relief, they does not have been answered and the appellant would derive no benefit from the respondents not answering them. We have already dealt with this matter and have made it clear that if they were true and made out by acceptable evidence, they could not be ignored as irrelevant. (2) If they were relevant, in the absence of their intrinsic improbability, the allegations could be countered by documentary or affidavit evidence which would show their falsity. In the absence of such evidence they could be disproved only by the party against whom the allegations were made denying the same on oath. In the present case there were serious allegations made against the Chief Minister and there were several matters of which he alone could have personal knowledge and therefore which he alone could deny, but what was, however, placed before the Court in answer to the charges made against the Chief Minister was an affidavit by the Secretary to Government in the Medical Department who could only speak from official records and obviously not from personal knowledge about the several matters which were alleged against the Chief Minister. In these circumstances we do not think it would be proper to brush aside the allegations made by the appellant, particularly in respect of those matters where they are supported by some evidence of a documentary nature seeing that there is no contradiction by those persons who alone could have contradicted them. In making this observation we have in mind the Chief Minister as well as Mrs. Kairon against whom allegations have been made but who have not chosen to state on oath the true facts according to them.” (emphasis added)

(26) It is, thus, established beyond doubt that there is political rivalry between the family of the petitioners and Shri Parkash Singh Badal-respondent No. 4. The possibility of the allegations emanating from such vindictiveness and rivalry cannot be completely ruled out.

(27) The question then is whether the petitioners could be granted the extra ordinary relief of issuing them a notice of a specified period so as to enable them to avail appropriate legal remedy. This Court in the case of the father of petitioner No. 1, Capt. Amarinder Singh, has granted such a relief in Criminal Miscellaneous No. 35545-M of 2007, decided on 1st June, 2007, when the close associate of the father of petitioner No. 1 had filed an application under Section 482 Cr. P.C. The operative part of the aforementioned order reads thus :-

“I have carefully considered the rival submission of learned counsel for the parties and perused the petition and judgments as cited above. A Constitution Bench of Hon’ble the Supreme Court way back in 1980 has dealt with the point in question and has held that for grant of anticipatory bail in the exercise of powers under Section 438 Cr. P.C. a first information report is not required and only the imminence of a likely arrest founded on a reasonable belief can be the ground for exercise of such powers even if an FIR is not yet filed. The Hon’ble Court has also held that a blanket order of bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because it will give protection in the cases of unlawful activity of any description whatsoever, even if the offence like murder is committed in presence of the public, therefore, this order may lead to lawlessness. This judgment of Constitution Bench of Hon’ble the Apex Court has held the field till date and an Hon’ble Division Bench of the Apex Court in **Adri Dharan Das’s** case (supra) has also decided by following the aforesaid ratio while holding that the jurisdictional scope of interference by the court in the process of investigation is limited. The Court ordinarily will not interfere with investigation of a crime or, with the arrest of accused in a

cognizable offence. The Court has also said that a blanket order should not generally be passed and the applicant should have reason to believe that he may be arrested. The court has further held that normally a direction should not issue to the effect that the applicant shall be released on bail “whenever arrested for whichever offence whatsoever”. Such blanket order should not be passed as it would certainly be a blanket to cover or protect any or every kind of allegedly unlawful activity. An order under Section 438 Cr. P.C. is a device to secure the individual’s liberty, it is neither a passport to the commission of crimes nor a seal against any and all kinds of accusations likely or unlikely. Thus, neither of these judgments has put an absolute restriction and embargo on the exercise of powers of the High Court under Section 438 in granting limited protection by way of an order that the petitioner cannot be arrested till he is given an advance notice in a given case. Moreover, in the case of Hardeep Singh (supra) where a learned single Judge of the Court has granted prayer for advance notice, learned Advocate General Shri Mattewal had appeared as Senior Advocate and had espoused the plea of Mr. Cheema taken herein, but, curiously enough, now he has taken a diametrically different stand which he has tried to justify by referring to the judgment of Hon’ble the Apex Court in the case of State of Maharashtra versus Mohd. Rashi and another (supra). In that case, the State had come in appeal before the Supreme Court against the order of the High Court directing that if any crime is registered against the applicant in future within a period of three years he shall be arrested in connection therewith except after service of four working days’ advance notice in writing to him. Further the High Court passed the said order in a contempt petition. However, in the instant case, the petitioner is a heart patient. He had held the post of Media Advisor to the former Chief Minister with the status of a Cabinet Minister. The only FIR against him as per the affidavit filed by the Inspector General of Police-cum-Director, Vigilance

Bureau, Punjab, is that he had promised a property dealer to get him one shop allotted in the City Centre Ludhiana and had accepted Rs. one lac in lieu thereof, thus, he is not an accused in the main scam. Besides, the Inspector General of Police-cum-Director, Vigilance Bureau, has stated that he has collected documented informations against him which are being examined by the Bureau. Moreover, several newspaper items about likelihood of arrests of the petitioner in future have already appeared as are referred to in this petition. In this background, when the petition has been filed under Section 482 Cr.P.C., I do not find any legal impediment in granting some temporary relief to the petitioner particularly when this Court is closed for summer vacations, till re-opening, while directing that he shall not be arrested in any case by the Punjab Vigilance Bureau without giving him for four days' notice in advance so that he could file anticipatory bail before the competent Court. Accordingly, the petition is disposed of with the aforesaid limited direction which shall continue only till 4th July, 2007. As during the course of hearing, there was a consensus that such a prayer for blanket bail should have been made by way of writ petition under Article 226 of the Constitution of India where this court has got wide powers to deal with the question of life and liberty of a citizen, the petitioner is granted liberty to approach this Court by way of a writ petition, if so advised.

1st June, 2007” (emphasis added)

The order has been upheld by Hon'ble the Supreme Court in SLP (Crl.) No. 3475 of 2005 (P-10).

(28) Taking into account various facts including the political rivalry, press statements made by Shri Parkash Singh Badal respondent No. 4 and his son; and the treatment meted out to Bharat Inder Singh Chahal in case FIR No. 5, dated 23rd March, 2007, we are persuaded to grant them some relief to, especially in view of the observations made by Hon'ble the Supreme Court in the case of S.M.D. Kiran Pasha

(supra). In para 14 of the judgment, which has been rightly relied upon by the learned counsel for the petitioners, their Lordships' have culled out the stage at which the right of personal liberty guaranteed by Article 21 of the Constitution could be enforced and went on to observe as under :-

“14. This question is at what stage the right can be enforced ? Does a citizen have to wait till the right is infringed ? Is there no way of enforcement of the right before it is actually infringed ? Can the obligation or compulsion on the part of the State to observe the right be made effective only after the right is violated or in other words can there be enforcement of a right to life and personal liberty before it is actually infringed ? What remedy will be left to a person when his right to life is violated ? When a right is yet to be violated, but is threatened with violation can the citizen move the court for protection of the right ? The protection of the right is to be distinguished from its restoration or remedy after violation. When right to personal liberty is guaranteed and the rest of the society, including the State, is compelled or obligated not to violate that right, and if someone has threatened to violate it or its violation is imminent, and the person whose right is so threatened or its violation so imminent resorts to Article 226 of the Constitution, could not the court protect observance of his right by restraining those who threatened to violate it until the court examines the legality of the action ? Resort to Article 226 after the right to personal liberty is already violated is different from the pre-violation protection. Post-violation resort to Article 226 is for remedy against violation and for restoration of the right, while pre-violation protection is by compelling observance of the obligation or compulsion under law not to infringe the right by all those who are so obligated or compelled. To surrender and apply for a writ of habeas corpus is a post-violation remedy for restoration of the right which is not the same as restraining potential violators in case of threatened violation of the

right. The question may arise what precisely may amount to threat or imminence of violation. Law surely cannot take action for internal thoughts but can act only after overt acts. If overt acts towards violation have already been done and the same has come to the knowledge of the person threatened with that violation and he approaches the court under Article 226 giving sufficient particulars of proximate actions as would imminently lead to violation of right should not the court call upon those alleged to have taken those steps to appear and show cause why they should not be restrained from violating that right ? Instead of doing so would it be the proper course to be adopted to tell the petitioner that the court cannot take any action towards preventive justice until his right is actually violated whereafter alone he could petition for a writ of habeas corpus ? The difference of the two situations, as we have seen, have different legal significance. If a threatened invasion of a right is removed by restraining the potential violater from taking any steps towards violation the rights remain protected and the compulsion against its violation is enforced. If the right has already been violated, what is left is the remedy against such violation and for restoration of the right.” (emphasis added)

(29) It is also pertinent to notice that the petitioners are already under control of the Court and Punjab Vigilance Bureau as three significant conditions have been imposed upon them *vide* order dated 24th May, 2007, passed in Criminal Miscellaneous No. 33867-M of 2007 (supra). One of the conditions is that they are not leave the country without permission of the Court and they shall also deposit their passports in the Registry of this Court. We also take notice of the fact that instant petition has been pending before this Court since July 2007. A stock reply has always been given that ‘no other case as on today’ is pending against the petitioners. Even during the hearing of this case, the learned State counsel has given the same stock reply. The petitioners are unlikely to flee from law even if some FIR is registered against them. As such, they do not have criminal record. Once the aforementioned

analysis has been done then the question arises should we allow the personal liberty of the petitioner to be violated first and then restore it or we should take notice of certain overt acts full of political overtones and vindictiveness ? During last about 11 months no other case 'as on date' has been registered is the stock reply. Instead of granting some relief to the petitioners would it be proper course to tell the petitioners that Court cannot take any action towards preventive justice ? We believe that we should be inclined to protect the personal liberty of citizens given to them by Article 21 of the Constitution.

(30) In view of the above, this petition succeeds. The petitioners shall be given four working days clear notice in case an FIR disclosing the commission of a cognizable offence is registered against them. These directions shall operate only for a period of one year i.e. upto 30th September, 2009 and not thereafter.

(31) The writ petition stands disposed of in the above terms.

R.N.R.

Before Uma Nath Singh & A.N. Jindal, JJ,

STATE OF PUNJAB,—Appellant

versus

MOHINDER SINGH,—Respondent

Murder Reference No. 8 of 2007

Criminal Appeal No. 1033/DB of 2007

30th May, 2008

Indian Penal Code, 1860—S. 302—Accused committing murder of his wife and daughter—No delay in lodging FIR by younger daughter of accused—Accused earlier convicted & sentenced for committing rape on his daughter who was minor at that time—Diabolical act of accused committing double murder—Rarest of rare cases—Death sentence confirmed.

Held, that in her statement to the police, complainant Shalu has given a graphic description as to how the accused entered the house;