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**121 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRM-M-17143-2022 (O&M)**  
Decided on : 21.04.2025

Sarwan Singh

.... Petitioner

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present: Mr. Amrinder Pal Singh Tung, Advocate, for the petitioner.  
Mr. Tarun Aggarwal, Sr. DAG, Punjab.

**Rajesh Bhardwaj, J.**

CRM-11618-2025

Prayer in the present application is for the grant of permission to go to New Zealand for a period of three months. Further prayer has been made to prepone the date of hearing in the main case which is fixed for 15.05.2025.

After hearing learned counsel for the parties, the date of hearing in the main case is preponed from 15.05.2025 to today. The case is taken up on board today itself for hearing. As far as prayer for the grant of permission to go to New Zealand is concerned, the same has been rendered infructuous, as the main case is being heard today itself.

Application stands disposed of.

CRM-20785-2022

Allowed as prayed for.

Main case

1. Prayer in the present petition is for quashing of the FIR No.03 dated 13.02.2002 registered under Section 188 IPC, at Police Station Dera



Baba Nanak, Police District Batala and all the consequent proceedings arising therefrom and for granting permission to the petitioner to go to New Zealand during the pendency of the present petition.

2. It has been submitted by learned counsel for the petitioner that the petitioner has been falsely implicated in the impugned FIR. He submits that as per the allegations made in the FIR, the petitioner and others were travelling in Tata Safari car during the Assembly elections and from their car one licensed .315 Bore rifle and one licensed .12 Bore single barrel gun were recovered at the Naka. He submits that after registration of the FIR, 20 years have been passed, but till date no challan under Section 173 Cr.P.C. has been filed in the present case. He submits that as per mandate of Section 468(2) Cr.P.C., the period of limitation for presentation of challan prescribed is already over and there is no bar for taking cognizance after the lapse of the period of limitation, as provided under Sub Section 2 of the Section 468 Cr.P.C. He submits that the FIR was registered on 13.02.2002 and the challan was required to be presented on or before 12.02.2003 as per mandate of Section 468(2) Cr.P.C. He has submitted that the petitioner had gone to New Zealand in the year 2005 and since then he is permanently settled there and is also having a New Zealand passport. He submits that the petitioner came to India and was to go back to New Zealand on 29.03.2022, but he was stopped from boarding the flight to New Zealand on the ground of pendency of the present FIR. He submits that from the facts and circumstances of the case, it is apparent that the petitioner is facing agony of the prosecution from the last more than 20 years and till date even the challan has not been presented. Learned counsel for the petitioner has further vehemently



contended that the present FIR was registered under Section 188 IPC against the petitioner in violation of Section 195 (1)(a)(i) Cr.P.C. as the complaint was required to be filed for the offence as mentioned above by the public servant concerned or by some other public servant to whom he was administratively subordinate, but in the present case no such complaint has been filed by the concerned public servant. He, thus, has relied upon the judgments of this Court in Jiwan Kumar vs. State of Punjab and others, 2009(1) RCR (Criminal) 415; Sweta Estates Private Limited vs. State of Haryana and others, in CRM-M-633-2014 decided on 26.03.2015; Naresh Bansal vs. State of Punjab and another, in CRM-M-44074-2013 decided on 09.12.2014 and Sandeep Gandotra vs. U.T. Chandigarh, in CRM-M-7045-2019 decided on 26.09.2019 and has submitted that this Court had already quashed the similar FIRs on the grounds taken therein. He, thus, submits that in these circumstances, prosecution of the petitioner is nothing but an abuse of the process of the Court and hence, the FIR in question deserves to be quashed.

3. However, learned State counsel has filed short reply by way of affidavit of Joga Singh, PPS, Deputy Superintendent of Police, Sub Division Dera Baba Nanak, Police District Batala. He has submitted that after completion of the investigation, the challan was prepared and submitted before learned Illaqa Magistrate concerned on 18.07.2022, however, no record of the same is available. He submits that the Investigating Officer had filed an application before learned Court of JMIC, Batala for obtaining the status of the present FIR. He submits that as per intimation, neither any such case was pending in the Court nor it was reflected in CIS system. He further



submits that letter dated 04.01.2023 was received from the Court of learned District and Sessions Judge, Gurdaspur, wherein, it was intimated that as per report received from learned Sub Divisional Judicial Magistrate, no record pertaining to the aforesaid case was available.

4. After hearing learned counsel for the parties and perusing the record, it is deciphered that the petitioner has been prosecuted in FIR No.03 dated 13.02.2002. It is evident that the FIR was registered about 23 years ago, whereas, as per the record, no record is available with the Court regarding the present case. Even otherwise for the similar offence, this Court in CWP-PIL-29-2021 and other connected cases in its own motion had already dealt with such type of FIRs and quashed the same vide order dated 01.10.2024.

5. As per Section 195 Cr.P.C., no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of IPC except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate. In the present case, proceedings against the petitioner under Section 188 of IPC have been initiated on the basis of F.I.R. and not on the basis of any complaint in writing of the public servant concerned as it required under Section 195 (1) (a) (i) Cr.P.C. However, Section 195 Cr.P.C. specifically provides that proceedings under Section 188 of IPC can only be initiated on the basis of complaint made in writing by the public servant concerned to the Court. The police has no power to register a case for the offence under Section 188 of IPC and investigate the matter. The registration of FIR for the offence under Section



188 of IPC is not permitted by the Code of Criminal Procedure. In **Sweta Estates Private Limited's** case (supra), this Court held as under:-

“As per Section 195 of the Code, no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of IPC except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.

In the present case, proceedings against the petitioner under Section 188 of IPC have been initiated on the basis of F.I.R. and not on the basis of any complaint in writing of the public servant concerned as it required under Section 195 (1) (a) of the Code. However, Section 195 of the Code specifically provides that proceedings under Section 188 of IPC can only be initiated on the basis of complaint made in writing by the public servant concerned to the Court. The police has no power to register a case for the offence under Section 188 of IPC and investigate the matter. The registration of FIR for the offence under Section 188 of IPC is not permitted by the Code.”

6. There is no gainsaying that the petitioner is facing agony of prosecution from the last more than 20 years. The petitioner is resident of New Zealand and because of the pendency of the present case, he has been restrained from going to New Zealand. The facts and circumstances of the present case clearly show that prosecution of the petitioner at this stage, is nothing but an abuse of the process of the Court.

7. Thus, weighing the facts and circumstances of the present case on the anvil of law settled, FIR No.03 dated 13.02.2002 registered under Section 188 IPC, at Police Station Dera Baba Nanak, Police District Batala and all the subsequent proceedings arising therefrom, are hereby quashed

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qua the petitioner.

7. Present petition stands allowed. Consequently, pending applications, if any also stands disposed of as infructuous.

21.04.2025

sharmila

Whether Speaking/Reasoned  
Whether Reportable

**(RAJESH BHARDWAJ)**  
**JUDGE**

: Yes/No  
: Yes/No