

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CRM-M-15004-2015 (O&M)

Date of Decision: 07.10.2015

State of Punjab ... Petitioner

vs.

Jagjit Singh Chahal ... Respondent

(2) CRM-M-15007-2015 (O&M)

State of Punjab ... Petitioner

vs.

Paramjit Singh Chahal ... Respondent

(3) CRM-M-15365-2015 (O&M)

State of Punjab ... Petitioner

vs.

Jagjit Singh Chahal ... Respondent

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B. BAJANTHRI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present: Ms. Reeta Kohli, Addl. AG Punjab with
Mr. Vaibhav Sharma, DAG Punjab
Mr. Vikram Chaudhri, Senior Advocate with
Mr. Harshit Sethi, Advocate for the respondents

Surya Kant, J.

(1) These three petitions under Section 439(2) of the Code of Criminal Procedure have been preferred by the State of Punjab for cancellation of the bail granted by a learned Single Judge of this Court vide order dated 22.03.2014, to Jagjit Singh Chahal and his brother Paramjit Singh Chahal in the cases (i) FIR No.56 dated 15.05.2013 u/s 379/411/473/468/471/212/120-B IPC, 21/22/25/25-A/27/29/61/85 of NDPS Act, 1985, 25/54/59 of Arms Act registered at Police Station Banur, District Patiala and (ii) FIR No.109 dated 24.12.2013 u/s

21/27/29 NDPS Act registered at Police Station Lambra, District Jalandhar.

(2) The allegations against Chahal brothers are that they have set up two pharmaceutical industries in the State of Himachal Pradesh at Baddi and Barotiwala, District Solan i.e. (i) M/s Montek Biopharma and (ii) MBP Pharmaceutical P.Ltd. These units were granted licences by the State Drug Controller, Himachal Pradesh and the Narcotic Control Bureau for manufacture, distribution, sale, purchase, possession, storage and consumption of 'controlled substances' mentioned in Schedule 'A' of the NDPS Act.

(3) Chahal brothers are alleged to have misappropriated the two controlled substances of ephedrine and pseudoephedrine supplied to them at concessional rates, for the illicit manufacturing and illegal trade of narcotics/synthetic drugs. The invoices of so-called sale or supply of their manufactured drugs containing these controlled substances, were found either to be fake or the consignees were non-existent.

(4) The prosecution version is that ephedrine and pseudoephedrine both are major precursor to manufacture Methamphetamine (ICE) and these controlled substances were sold to the drug racketeers at a highly inflated price. The State Police conducted raids, searches and seizures at the residence, office, vehicles and factory premises of Chahals' and is alleged to have recovered huge quantity of contraband. In fact a big racket to manufacture, sale and abuse of synthetic drugs by pharmaceutical units in connivance with

drug lords like Jagdish Singh @ Bhola is alleged to have been busted and a string of FIRs were registered. Jagjit Singh Chahal was arrested. Paramjit Singh Chahal could not be arrested as he fled from the scene.

(5) The prosecution has alleged that Chahal brothers amassed assets worth more than ₹72 crores without the corresponding known sources of income. The Enforcement Directorate as well as the Prescribed Authority under the Prevention of Money Laundering Act have seized their properties on finding that these were acquired from the 'proceeds of crime'.

(6) The Drug Controlling Authorities of various States like Tamil Nadu, Andhra Pradesh and Maharashtra etc. have verified that the consignees to whom 'manufactured drugs' are claimed to have been sent either do not exist or the so-called invoices are not genuine. The correspondence between the Drug Controlling Authorities of various States with Himachal Pradesh is relied upon to contend that Chahals have been nailed by different investigating or statutory agencies of Central and State Governments.

(7) Chahal brothers, on the other hand, have accused the Punjab Police of misusing its powers and falsely implicating them in concocted cases. The controlled substance supplied to them under valid licences is said to have never been misused and records are meticulously maintained. The Drug Controlling Authority of Himachal Pradesh has periodically inspected those records. The sale of manufactured drugs and such records are claimed to be genuine. It

is alleged that neither the Drug Controller-cum-Licensing Authority of Himachal Pradesh nor the local police or any other Department were associated while conducting the search of factory premises.

(8) Jagjit Singh Chahal further alleged that he was illegally arrested on the night of 13th November, 2013 from his residence near Amritsar and was illegally detained till he was brought to Police Station, Banur (Patiala) on 14th November, 2013. His old father living at Ludhiana was also not spared. The CCTV camera installed at his residence would reveal as to how he was arrested and how their private vehicles were taken away by the police officials to plant false recoveries from such vehicles.

(9) It is also the case of Chahals that their names did not figure in the FIR and they have been entangled on the basis of alleged disclosure statement of Jagdish Singh @ Bhola after he was arrested on 11.11.2013.

(10) Paramjit Singh Chahal approached this Court through CRM-8339-M-2014 to release him on bail without arresting or subjecting him to custodial interrogation or judicial custody. His brother Jagjit Singh Chahal moved CRM-8519-M-2014 to release him on regular bail in FIR No.56 dated 15.05.2013 and CRM-8516-M-2014 for his release on bail in FIR No.109 dated 24.12.2013.

(11) A learned Single Judge vide common order dated 22.03.2014 allowed these petitions and admitted both the brothers to bail to the satisfaction of the trial Court observing, *inter alia* –

- (i) There are several accusations against Punjab Police based upon photographic and other evidence to show the procedural lapses and lop-sided investigation so far as search and seizures were concerned;
- (ii) Even a writ petition for transfer of investigation to CBI at the behest of the petitioners is pending before this Court;
- (iii) Petitioners have relied upon factual aspects to show that recovery from vehicles etc. are not genuine;
- (iv) Even if Paramjit Singh Chahal had not cooperated with the investigation, the eight circumstances of such non-cooperation highlighted by the police would not justify his custodial interrogation;
- (v) The Court genuinely feels that the police wanted to extract information from Paramjit Singh Chahal which was *per se* self-incriminatory in nature;
- (vi) Even in the absence of custodial interrogation, charge-sheet had already been filed;
- (vii) *Prima facie*, there was substance in the averments made by Chahals and the Court cannot be a silent spectator to the serious violations;
- (viii) In FIR No.109, Jagjit Singh Chahal was not named and no recovery was effected from him;
- (ix) Pseudoephedrine and ephedrine are 'controlled substances' by virtue of an Order issued under Section 9-A and the

alleged offence was punishable under Section 25-A of the NDPS Act therefore, rigors of Section 37 do not apply;

(x) The recovery of Methamphetamine (ICE) – a psychotropic substance from the Honda Accord car has been seriously doubted by producing photographs;

(xi) The petitioners do not have any past antecedents which could prompt deriving any adverse inference of their likelihood of indulging in any offence, if released on bail.

(12) State of Punjab challenged the above-mentioned order of this Court and their SLP along with a bunch of other petitions arising out of the drug scam were disposed of by the Hon'ble Supreme Court vide order dated 17.03.2015, relegating them before a Division Bench of this Court so that all the matters could be comprehensively heard along with the PIL. The Hon'ble Supreme Court thus directed as follows:-

“We accordingly dispose of the special leave petitions reserving liberty to the petitioners to approach the Division Bench before whom the writ petitions mentioned above and connected matters are listed for hearing. We make it clear that even the State of Punjab shall be free to approach the Division Bench for cancellation of the bail granted to Jagjit Singh Chahal and Parmjit Singh Chahal, if so advised.”

(13) In view of the liberty afore-mentioned given by the Apex Court, that the State of Punjab has filed these petitions under Section 439(2) CrPC for cancellation of bail granted to Chahal brothers.

(14) We have heard learned Addl. AG Punjab as well as learned senior counsel for Chahals and carefully gone through the record.

(15) Learned State counsel vehemently contended that this Court was misled, material facts were concealed and the settled principles of law were misquoted, prompting this Court to grant the bail. It was urged that the manner in which Paramjit Singh Chahal was allowed to surrender in the High Court and then released on bail, was totally unusual and exceptional. She further argued that –

- (i) Huge quantity of controlled substances, namely, pseudoephedrine and ephedrine allocated under the licences have been siphoned off to manufacture methamphetamine (ICE) – a synthetic drug which is sold at exorbitant rates in the illicit drug market.
- (ii) The Drug Controlling Agencies of various States have independently verified and held that the alleged assignees of manufactured drugs are non-existent and the invoices are fake and fabricated;
- (iii) The Central Government agencies have also *prima facie*, found merit in the allegations and most of the properties acquired by Chahals in a short span have been seized or attached being the proceeds of crime;
- (iv) This Court failed to notice the recovery of ICE, 50gm whereof is notified as ‘commercial quantity’. The ICE recovered from Chahals’ premises/vehicles is more than one

and a half kilogram, hence Section 37(1)(b)(ii) is directly attracted;

- (v) The allegations regarding non-observance of mandatory procedure while conducting search and seizure are false and have already been rejected by the Hon'ble High Court of Himachal Pradesh vide judgement dated 20.08.2014 while dismissing the writ petition filed by Chahal's pharmaceutical unit – MBP Pharmaceutical P.Ltd.;
- (vi) There is a sea-difference between 'custodial interrogation' of a suspect as compared to the direction issued by this Court after granting interim bail, to interrogate Paramjit Singh Chahal "*in the visible presence of an Advocate of his choice*" for eliciting vital clues in an ongoing investigation;
- (vii) This Court has granted bail to Chahals overlooking the binding precedents like: (i) **Union of India vs. Ram Samujh and Anr. (1999) 9 SCC 429** where the High Court had granted bail to a suspect from whom 5kg opium was recovered and that order was set aside in view of Section 37 of the NDPS Act and further observing that those who are dealing in narcotic drugs 'are instruments in causing death or in inflicting death-blow to a number of innocent young victims and their act causes deleterious effects and a deadly impact on the society...'; (ii) **Achint Navinbhai Patel alias Mahesh Shah vs. State of Gujarat & Anr. (2002) 10 SCC 559** was a case where

there were allegations of illegal manufacturing and exporting 2000kg and 162kg of Mandrax tablets against the accused persons. Although the case was not decided for eight years yet the bail was declined; (iii) **Narcotics Control Bureau vs. Karma Phuntsok & Ors. (2005) 12 SCC 480**, was a case where the accused was convicted with the aid of Section 29 read with Section 20(b)(ii)(c) of the NDPS Act and the High Court released him on bail on the premise that Section 37 was not attracted. The Apex Court cancelled the bail applying the rigors of Section 37 of the NDPS Act; (iv) **NR Mon vs. Md. Nasimuddin (2008) 6 SCC 721** also reiterates these principles.

(16) Opposing the State's plea, learned senior counsel for Chahals forcefully urged that the instant applications are not maintainable as no instance of any misuse of the concession of bail granted to Chahals is whispered or disclosed. He maintained that this Division Bench cannot assume the role of appellate court while entertaining these applications as no intra-Court appeal in such matters is maintainable. He further argued that the entire petition is based on the premise that this Court was misled to pass an illegal order. Such a plea could be taken before the Hon'ble Supreme Court only but the State withdrew its SLPs so as to seek 'cancellation of bail' which can be considered only on limited grounds like misuse of that concession. The order of bail passed by this Court was further defended on the grounds that –

- (i) Chahal brothers have been falsely implicated in a concocted case;
- (ii) Their pharmaceutical units admittedly had valid licenses to manufacture, distribution, sale, purchase, possession, storage and consumption of 'controlled substances' as mentioned in Schedule 'A' under the NDPS Act;
- (iii) The pharmaceutical units have maintained the complete records regarding receipt, utilization and supply of controlled substances or the manufactured drugs. They have been well recognized for the best practices;
- (iv) Chahal brothers were not named in the FIRs;
- (v) Jagjit Singh Chahal was illegally arrested on 13.11.2013 and raids conducted on their premises were also unlawful as may be seen from CCTV camera recordings;
- (vi) The mandatory procedure laid down in NDPS Act must be scrupulously followed failing which the action is liable to be vitiated;
- (vii) The allegations against both the brothers are identical. Since one of them (Jagjit Singh Chahal) was subjected to intensive custodial interrogation, there was no legal necessity to arrest Paramjit Singh Chahal;
- (viii) This Court was *prima facie* satisfied that the so-called recovery of Methamphetamine (ICE) from the vehicles was seriously doubtful;

- (ix) Once there was a wholesome violation of the prescribed procedure and safeguards, the restrictions under Section 37 cannot be invoked;
 - (x) The judicial discretion exercised by this Court while accepting the surrender made by Paramjit Singh Chahal in Court or in granting interim bail, cannot be interfered with even if two views are possible;
 - (xi) The bail was granted more than one and a half year back. There is no allegation or material on record to suggest that Chahals have taken any undue advantage thereof.
- (17) There is no gainsaying that ‘rejection’ of bail or the ‘cancellation’ of bail are two different situations and need to be considered and dealt with differently. There must be very cogent and overwhelming circumstances necessary for passing an order, directing the cancellation of bail already granted. These circumstances generally known are (a) interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice; or (b) misuse of the concession granted to an accused in any manner; (c) when bail was granted ‘ignoring material evidence on record’; and (d) the bail was granted relying upon ‘irrelevant materials’. [See (i) **Dolat Ram & Ors. vs. State of Haryana (1996) 11 SCC 711**; (ii) **Puran etc. etc. vs. Ram Bilas & Anr. etc.etc., (2001) 6 SCC 338**; and (iii) **Manjit Parkash & ors. vs. Shobha Devi & Anr., (2009) 13 SCC 785**]

(18) The Supreme Court in *Narendra K. Amin (Dr.) vs. State of Gujarat & Anr., (2008) 13 SCC 584*, reiterated that the parameters for ‘grant’ of bail or ‘cancellation’ of bail are different and the Court though would avoid re-appreciation of the evidence while dealing with an application for cancellation of bail but if it is found that ‘irrelevant material’ was taken into consideration or that ‘relevant material’ was omitted, the order granting bail would be perverse and the cancellation is inevitable.

(19) Mr. Chaudhary, learned senior counsel for Chahals cited *Abdul Basit alias Raju and Others vs. Mohd. Abdul Kadir Chaudhary and another, (2014) 10 SCC 754*, wherein the Apex Court has laid down that the concept of “setting aside” an unjustified, illegal or perverse order granting bail is different from the concept of “cancellation” of bail on the ground of accused’s misconduct or new adverse facts having surfaced after the grant of bail which requires such cancellation. It has been further held that “*an order granting bail can only be set aside on grounds of being illegal or contrary to law by the Court superior to the Court which granted the bail and not by the same Court*”. (emphasis applied)

(20) The conjoint reading of the cited case-law doubtlessly sets at rest that the High Court shall not exercise its powers under Section 439(2) *re.* cancellation of bail on an assumed expanded jurisdiction where it can (i) reappraise and re-appreciate the evidence/material which was taken into consideration while granting the bail; (ii) the grounds like gross misrepresentation of facts, misleading the Court or

indulging in fraud while securing the bail order, would amount to seeking review of the bail order which is impermissible in view of the express bar created under Section 362 CrPC; (iii) the parameters to be followed while cancelling a bail are different than those to be observed while granting bail; and (iv) the High Court will not invoke its powers under Section 439(2) and cancel the bail even if a second view is possible,.

(21) Conversely, the High Court would be justified in cancelling the bail granted, if it is brought to its notice that (i) the accused has resumed illegal activities and thus misused his liberty, (ii) he has interfered with the course of investigation, (iii) there are attempts to tamper with evidence or witnesses, (iv) the accused threatens witnesses or attempts to hamper smooth investigation, (v) there is likelihood of his fleeing to other country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety etc. These grounds are indeed illustrative only and not exhaustive.

(22) It is appropriate to notice some of the undisputed material facts at this stage. There is no averment or allegation that after they were granted bail by this Court on 22.03.2014, Chahals have misused that concession in any manner. There is also no material to infer that the accused ever attempted to win over the prosecution witnesses or destroy the evidence against them. They are also not responsible for

delaying the trial as the same has been stayed by this Court in connected cases.

(23) One cannot be oblivious of the fact that the composition of a two-Judge Bench does not empower us to sit in appeal over the order passed by this Court comprising a learned Single Judge as no intra-court appeal is maintainable against the order dated 22.03.2014. This Court can consider the application seeking cancellation of the bail only on the premise whether the said order passed by it falls within the fore-corners of any exception noticed in para-21 of this order. Such an exercise neither amounts to assuming the role of appellate court nor of 'reviewing' the order dated 22.03.2014.

(24) Having held that, the State can fall back and seek the 'cancellation of bail' only on the ground whether this Court granted the bail by taking into consideration 'irrelevant material' or by overlooking the 'relevant material'?

(25) In this regard, it has to be noticed that the prosecution-case *re*: illegal sale of pseudoephedrine and ephedrine to the drug racketeers through fake invoices or forged supplies of manufactured drugs to the non-existent firms in different States was not presented in its right perspective as the vital material consisting of correspondence between Drug Controlling Authorities of several States or the invoices alleged forged by Chahals, were not brought on record. Similarly, the recovery of huge quantity of controlled substances and Methamphetamine (ICE) of 'commercial quantity' escaped due consideration for want of appropriate assistance. The

quantity of Methamphetamine (ICE) allegedly recovered from the premises or vehicles of Chahals is much more than its 'commercial quantity'. The gravity of these allegations were to be seen keeping in view the fact that 'pseudoephedrine' and 'ephedrine' are the major 'precursor' for manufacturing Methamphetamine (ICE) – a synthetic drug.

(26) This Court was misled to believe that the allegations *re:* siphoning off the controlled substance or arresting Jagjit Singh Chahal and conducting the search or seizure are in violation of the statutory safeguards. The material placed on record by the State and its prosecuting agency comprising the communications received from Drug Controlling Authorities of various States like Tamil Nadu, Andhra Pradesh and Maharashtra etc., *prima facie* unveil a totally different story.

(27) Paramjit Singh Chahal had been evading arrest for almost five months before he suddenly appeared. His version was believed as the official documents now relied upon by the prosecution were not on record at that time. Similarly, the observations made by the Hon'ble High Court of Himachal Pradesh vide judgement dated 20.08.2014 regarding motive to stall the ongoing investigation are also a subsequent event. In the absence of these relevant materials, irrelevant considerations prevailed upon the decision-making process of this Court.

(28) There was avoidable haste in entertaining the pre-arrest bail petition of Paramjit Singh Chahal for want of full and correct

facts due to which he succeeded in surrendering in the High Court and got interim bail to escape custodial interrogation.

(29) Had there been proper assistance to this Court, the decision in Niranjan Singh & Anr. vs. Prabhakar Rajaram Kharote and another (1980) 2 SCC 559, would have been appropriately distinguished as that was a case of a ‘private complaint’ in which the Magistrate had ordered enquiry under Section 202 CrPC and after taking oral evidence of the witnesses, he found that there was sufficient ground to proceed against the suspected Police Officers under Sections 302, 341, 395 and 404 read with Section 34 and 120-B of IPC. Since non-bailable warrants were issued for production of the accused, the Sessions Court granted bail to the summoned accused on certain terms and conditions. The High Court as well as the Apex Court declined to interfere in the bail order as there could arise no occasion for “custodial interrogation” of an accused summoned to face trial in a private complaint case. On the other hand, there are numerous provisions, opening with non-obstante clauses in the NDPS Act, advocating the legislative policy of stringent conditions for the grant of bail to a person accused of committing offences under the NDPS Act.

(30) Section 37(1)(b) of the NDPS Act has no other meaning except that in addition to the offences under Sections 19, 24 and 27-A, the special conditions mentioned in its sub-clause (ii) are applicable in all those cases also where a person is accused of the offences ‘involving commercial quantity’. Now when there is material on record to make

out a *prima facie* case under Sections 9A, 21(c) read with Section 27-A and the offences are alleged to have been committed through an organized networking by the drug mafia, rich and affluent persons who are identified as the principal offenders, this Court could not have declared its satisfaction or belief that Chahals were not guilty of committing any offence or that they are not likely to commit the offence while on bail.

(31) The occasion to cause aspersion on the prosecution story or for alleged non-observance of the mandatory procedure regarding arrest, search or seizure conducted in Chahals' cases, will firstly arise before the Special Judge when the truth will surface on weighing the evidence to be led by the parties.

(32) There is a qualitative difference between 'custodial interrogation' vis-à-vis an accused on bail who is constantly guided by the legal advice of his advocate. Unfortunately, Chahals as well as the prosecution did not cite the binding precedents in this regard like: (i) **State (rep by the CBI) v. Anil Sharma (1997) 7 SCC 187**; (ii) **Nasiruddin v. State (NCT) Delhi and Ors., (2013) 10 SCALE 141**.

(33) There is *per se* nothing wrong in releasing an accused who is in judicial custody, on regular bail when the investigation is complete; charge-sheet has been filed but the trial is likely to be delayed. The discretion exercised by this Court in the case of Jagjit Singh Chahal who was in judicial custody, thus cannot be termed as an improper or erroneous exercise of jurisdiction.

(34) The parameters for the grant of regular bail are surely different than those for granting the pre-arrest bail. This Court could not draw that distinction while treating Paramjit Singh Chahal at par with his brother Jagjit Singh Chahal. Mere submission of charge-sheet in deference to the statutory time limit does not mean that the doors under Section 173(8) CrPC were/are closed for the prosecution. If the prosecution can elicit more information or vital clues to find out the deep-rooted nexus of drug traffickeers or any other new material having bearing on the merits of the case through the custodial interrogation of Paramjit Singh Chahal, such information or material will definitely assist the Special Court to arrive at a just conclusion. The doors for such an eventuality however, were closed, little realizing that the Apex Court's observations that the persons dealing in narcotic drugs are more dangerous than a murderer as they are instruments in causing death or in inflicting death-blow to a number of innocent young victims who are vulnerable and that the sale and supply of narcotic drugs causes deleterious effects and deadly impact on the society. Those who are dealing in this illicit trade are "*a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely*". [Ref. **Union of India vs. Ram Samujh and Anr. (1999) 9 SCC 429**]

(35) Since the prosecution has not alleged any misuse of the liberty granted to Jagjit Singh Chahal and the judicial discretion

exercised by this Court in his case is consistent with the settled principles, we are not inclined to cancel the bail granted to him.

(36) The order granting pre-arrest bail to Paramjit Singh Chahal is however, palpably wrong. It has hampered the investigation and deprived the investigating agency from reaching at a better conclusion. It has taken into consideration the irrelevant materials, the veracity and truthfulness whereof is yet to be adjudged by the Special Court. It has overlooked the relevant materials like nature of allegations and the huge quantity of ICE of 'commercial quantity'. The erroneous exercise of discretionary power by this Court in granting interim and final pre-arrest bail to Paramjit Singh Chahal in CRM-M-8339-2014 unhesitatingly renders the order dated 22.03.2014 fallible within the limited jurisdictional scope of Section 439(2) of CrPC, hence those bail orders deserve and are ordered to be cancelled.

(37) As a result of above discussion, CRM-M-15007-2015 (State of Punjab vs. Paramjit Singh Chahal) is allowed and the orders granting interim bail order dated 06.03.2014 as well as the final order dated 22.03.2014 in that case are hereby cancelled. CRM-M-15004-2015 and CRM-M-15365-2015 filed by the State of Punjab against Jagjit Singh Chahal are dismissed.

(Surya Kant)
Judge

(P.B. Bajanthri)
Judge

07.10.2015

vishal shonkar

V.VISHAL
2015.10.09 15:18
I attest to the accuracy and
authenticity of this document

