

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-2401-2020 (O&M)

Date of Decision:-20.1.2020

HC Bagga Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Manoj K. Sharma, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner has approached this Court seeking grant of anticipatory bail as he apprehends his arrest consequent upon non-bailable warrants having been issued by the Trial Court vide its judgment dated 10.1.2020.
2. Notice of motion.
3. On asking of the Court, Mr. Saurav Khurana, Deputy Advocate General, Punjab, accepts notice on behalf of the respondent-State. A copy of the petition has been furnished to the learned State counsel.
4. I have heard the learned counsel for the petitioner as well as the learned State counsel.
5. A few facts necessary to notice for disposal of this petition are that FIR No.235 dated 5.7.2018, Police Station Sadar Jagraon, District Ludhiana under Sections 21/22 of Narcotic Drugs and Psychotropic Substances Act,

1985 came to be lodged against one Baljeet Singh @ Bittu, who was tried by the learned Special Court, Ludhiana and was acquitted vide judgment dated 10.1.2020. While acquitting the accused Baljeet Singh @ Bittu, the Trial Court observed that the accused had been falsely implicated by the police officials and consequently held the police officials namely ASI Gurmeet Singh, ASI Ramji Dass, ASI Manjinder Singh, HC Bagga Singh and DSP Kanwarpal Singh guilty of having committed an offence punishable under Section 58(1)(a) and (c) of Narcotic Drugs and Psychotropic Substances Act, 1985. The operative portion of the said judgment reads as follows:

“However at the same time in the opinion of this court resultantly in view of the above discussion, it is fit case to attract the provisions of section 58(1) (a) and (c) of the NDPS Act 1985. The officials who have placed active role in hatching the conspiracy must have the feel of noose which they had so skill fully, created and they must taste the portion which they had so thoughtfully prepared for falsely implicating the innocent person Baljit Singh. **Hence ASI Gurmeet Singh, ASI Ramji Dass, ASI Manjinder Singh, HC Bagga Singh and DSP Kanwarpal Singh are hereby held guilty and convicted for the commission of an offence punishable u/s 58(1) (a) and (c) of the NDPS Act 1985.** However no doubt none of these convicted person are present to say that no charge has been framed against them but in view of section 464 of the Cr.P.C., any finding or order cannot be considered as invalid even due to omission of non framing of charge i.e., u/s 58 NDPS Act for which above persons are convicted. To support above opinion this court has relied upon the citation **Rajbir Singh and another Vs. State of Haryana and another 2009 (3) RCR Criminal, Hon’ble Supreme Court of India, 673.** They are ordered to be summoned by issuance of N/B/W to hear on the plea if any claimed by them otherwise on the hearing of quantum of sentence as and when they are appeared or produced before this court and the file be consigned to the record room. The proceedings qua the convicted persons be separated and these proceedings qua the convicted persons be put up alongwith the main file on 31.1.2020 and for that date fixed, appearance of the convicted persons for above reason is awaited.”

(emphasis supplied)

6. The aforesaid procedure of holding somebody guilty even without issuing any notice is unheard of. The Trial Court has tried to justify the same while taking aid of Section 464 Cr.P.C. It is a settled principle of criminal jurisprudence that in case any penalty or any penal action is to be taken against any person, a proper opportunity is to be afforded to him to defend himself. However, the Trial Court has absolutely disregarded the said principle and has chosen to straightaway convict the official witnesses and has adjourned the matter for 31.1.2020 to hear them in case they have to plead anything or to hear them on quantum of sentence. Since, non-bailable warrants have been issued, the apprehension of the petitioner regarding his arrest is genuine. Consequently, the petition is accepted and the petitioner is directed to appear before the Special Judge, Ludhiana within a period of one week from today. The learned Special Judge, Ludhiana shall release the petitioner on bail subject to his furnishing bail bonds/surety bonds to its satisfaction.
7. Needless to mention the petitioner would be at liberty to avail of appropriate remedies so as to challenge the aforesaid judgment.

20.1.2020

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No