

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

CRM-M-30044-2020 (O&M)
Date of Decision:-28.9.2020

Varun Kumar ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Prateek Pandit, Advocate for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner assails order dated 27.7.2020 (Annexure P-7) passed by learned Judge, Special Court, Kapurthala vide which the learned Special Court, Kapurthala, while accepting an application for “review” of order dated 25.7.2020 (Annexure P-6) passed by the same very Court has set aside the order dated 25.7.2020 granting bail to the petitioner.
2. A few facts, necessary to notice for disposal of this petition, are that on 16.5.2020 during the course of ‘*nakabandi*’, a car, being driven by Nekdeep Singh @ Sunny, was apprehended and upon search of the aforesaid Nekdeep Singh @ Sunny, 17 intoxicating injections were recovered from the pocket of

pants worn by him, while intoxicating powder weighing 1 kg. was recovered from underneath the driver seat. It is further the case of prosecution that the aforesaid Nekdeep Singh @ Sunny, during the course of interrogation, made disclosure statement nominating certain more accused leading to arrest of such persons including the present petitioner Varun Kumar. The petitioner moved an application seeking grant of regular bail, which was accepted by the learned Special Court, Kapurthala vide order dated 25.7.2020 (Annexure P-6) and the petitioner was ordered to be released on bail. While granting bail the petitioner, the Special Court, Kapurthala noticed the facts in the following manner as have been recorded in para No.3 of the aforesaid order:

“3. In the present case, that on 16.05.2020, in the area of Nizampur Turn Badshahpur, Police Station Kotwali, Kapurthala, non applicant Nekdeep Singh was apprehended with 01 kg. intoxicant powder, 17 intoxicant injections without label, one mobile phone set, Rs.1000/- and a car bearing registration No.PB-08-EL-1937 make Hyundai. Afterwards, on the basis of disclosure statements of non applicant Sarabjit Singh @ Loga, the name of present applicant was also unearthed in the present case, but nothing to that contraband was recovered from him. Accordingly, he is in custody since 03.07.2020 in the present case.”

3. Two days after passing of the aforesaid order dated 25.7.2020, the prosecution moved an application before the Special Court, Kapurthala for reviewing of the aforesaid order on the ground that the facts have been incorrectly noticed in the order dated 25.7.2020 inasmuch as the contraband i.e. 1 kg. of ‘heroin’ had been recovered at the instance of both the accused namely Sarabjit Singh @ Loga and Varun Kumar (petitioner). The Special Court, Kapurthala, while observing that it was a case of inadvertence and oversight pertaining to a material fact that it was infact a case of joint recovery and not a case where no recovery had been effected from the

present petitioner, accepted the application moved by the prosecution and consequently set aside the order granting bail to the petitioner i.e. order dated 25.7.2020.

4. The learned counsel for the petitioner, while assailing the impugned order dated 27.7.2020 (Annexure P-7), has submitted that the Court had no power of review or setting aside the order granting bail, passed by the same very Court on 25.7.2020 and had virtually exceeded its jurisdiction as review of an order passed by a Criminal Court is specifically barred under provisions of Section 362 Cr.P.C.
5. Opposing the petition, the learned State counsel has submitted that since it is a case of a glaring oversight by the Special Court and since the order in question was reviewed immediately after the same was passed i.e. within two days of passing of the said order and that too when the accused/petitioner had infact not even been released from the jail, the Trial Court was fully competent to rectify its error especially since it is a case of recovery of 'commercial quantity' of contraband at the instance of the petitioner Varun Kumar and his co-accused Sarabjit Singh @ Loga.
6. I have considered aforesaid submissions.
7. It is a case where one Nekdeep Singh @ Sunny was initially arrested by the police on 16.5.2020 and contraband was recovered from him. However, pursuant to his disclosure statement, the present petitioner Varun Kumar and one Sarabjit Singh @ Loga are stated to have been arrested from Jaipur, who further made disclosure statements to the effect that they had kept concealed 1 kg. of 'heroin' in an abandoned vehicle in Kapurthala. It is further the case of prosecution that pursuant to the said disclosure statements made by

petitioner Varun Kumar and Sarabjit Singh @ Loga, they led the police party to Kapurthala, where they had kept concealed the contraband i.e. 'heroin' in a car and got the same recovered. It is thus a case where the present petitioner Varun Kumar and Sarabjit Singh @ Loga jointly led the police party to recovery of 1kg. of 'heroin'. However, this Court finds that the Special Court had certainly incorrectly recorded the facts as regards the factum of recovery and it is not a case of recovery of 1 kg. of 'heroin' solely at the instance of co-accused Sarabjit Singh @ Loga but is a case where both Varun Kumar (petitioner) and Sarabjit Singh @ Loga had together led the police party to the nominated place and got the recovery effected.

8. However, all said and done, this Court does find that the Special Court having passed an order dated 25.7.2020 (Annexure P-6), even if, based on incorrect facts, was not competent to review its own order as review is specifically barred by provisions of Section 362 Cr.P.C. Consequently, the impugned order dated 27.7.2020 (Annexure P-7) cannot sustain and is hereby set aside.
9. This Court is, however, of the opinion that there is a glaring error in order dated 25.7.2020 (Annexure P-6) which apparently has occurred as the material facts were noticed incorrectly and as such the said order also cannot be allowed to sustain.
10. The learned counsel for the petitioner has, however, vehemently submitted that since the aforesaid order dated 25.7.2020 (Annexure P-6) is not under challenge in the instant petition under Section 482 Cr.P.C. and that even the State/prosecution has not moved any application for cancellation of the aforesaid order, it would not be appropriate to set aside the said order, at this

stage, when he is not even in possession of the relevant documents to support his case as challan has not been presented till date.

11. I have considered the aforesaid submissions.
12. No doubt, this Court in exercise of its inherent powers under Section 482 Cr.P.C. may not be competent to *suo motu* set aside order dated 25.7.2020 (Annexure P-6) but Section 397 read with Section 401 Cr.P.C. vests this Court with ample powers to rectify any order passed by the Trial Court, in case any error has come to its notice. Section 397 Cr.P.C., for the sake of ready reference, reads as follows:

“397. Calling for records to exercise powers of revision

- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

- (2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
- (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

13. This Court having noticed that that there is a glaring error in order dated 25.7.2020 (Annexure P-6) inasmuch as the Trial Court had incorrectly recorded material facts regarding the factum of recovery, is not expected to shut its eyes to the same. Rather this Court is expected to take remedial measures. Consequently, the order dated 25.7.2020 (Annexure P-6) is also aside with a direction to the Special Court, Kapurthala to decide the matter afresh after noticing the facts correctly. The petitioner would be at liberty to place on record any additional document, in case he desires, before the Special Court. The Trial Court is directed to dispose of the aforesaid application expeditiously.
14. It is further clarified that the Trial Court shall consider the application independently without being influenced by anything as may have been recorded in this order.
15. The petition stands disposed of accordingly.

28.9.2020

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No