

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

CRR No.1317 of 2021 (O&M)

Date of Decision: 03-12-2021.

Harashdeep Singh

...Revisionist-Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Jasdeep Singh Gill, Advocate,
for the revisionist-petitioner.

Ms. Samina Dhir, Deputy Advocate
General, Punjab.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the order dated 29.09.2021 as handed down by learned Judge, Special Court, Fazilka, whereby the application, preferred by the revisionist-petitioner (here-in-after referred to as “the petitioner”) under Section 169 Cr.P.C. for seeking his release from judicial custody in the criminal case arising out of the FIR bearing No.60 dated 11.07.2021 registered at Police Station City-II, Abohar, under Sections 18 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”) has been dismissed, the petitioner has preferred the instant revision petition.

2. Bereft of unnecessary details, the facts, leading to the filing of the present revision petition, are that on receipt of a secret information

regarding the petitioner and his co-accused Gurjant Singh @ Janta, Varinder Singh @ Baga and Prem Singh having been indulging in bringing the opium from Rajasthan and selling the same at higher rates in the area, the police party laid a picket and intercepted the Car bearing Registration No.PB-46Q-4929 and the above-named accused were found sitting in the same. The search of the Car allegedly resulted in the recovery of 'opium' weighing 3 kg. During the investigation, the petitioner was reportedly found to be innocent. Resultantly, he (petitioner) moved the afore-said application wherein the impugned order has been passed.

3. Short Reply, filed on behalf of the respondent-State by way of the affidavit of Deputy Superintendent of Police, Sub-Division Abohar, District Fazilka, has been submitted in the Court and the same is taken on the record.

4. I have heard learned counsel for the petitioner as well as learned State counsel in the present revision petition and have also perused the file thoroughly.

5. Learned counsel for the petitioner has contended that during the investigation of the case, an enquiry was conducted by the Superintendent of Police concerned and though as per the enquiry report, the petitioner was found to be innocent but the police did not move any application for seeking his release from the judicial custody as envisaged under Section 169 Cr.P.C and due to this reason, the petitioner was constrained to file the application under the said provisions but the same has wrongly been dismissed by the Court below vide the impugned order and hence, this order is liable to be set

aside. To buttress his contentions, he has placed reliance upon the observations made by the Co-ordinate Bench in **CRM-M No.31720 of 2018 (O&M) titled as *Ranbir Singh vs. State of Punjab Decided on 09.08.2018.***

6. However, learned State counsel has argued that while appreciating the material available on the record after the submission of the Challan, the trial Court has taken the cognizance against the petitioner in this case and has passed the impugned order which is perfectly legal and therefore, this petition be dismissed.

7. The petitioner is stated to be accompanying his above-named three co-accused in the said Car at the time of its interception by the police party and he was also apprehended at the spot. It has been mentioned in Para No.4 of the Short Reply that during the investigation, the grand-father of the petitioner moved an application pleading his (petitioner's) innocence therein and praying for conducting an enquiry in the matter and in the enquiry as conducted pursuant thereto, the petitioner was found to be innocent. Further, as mentioned in Para No.5 therein, the Challan was filed in the Court while mentioning the name of the petitioner in Column No.2 therein.

8. A perusal of the impugned order reveals that the trial Court has categorically observed therein that it was not inclined to consider the said enquiry report exclusively so as to release the petitioner from the custody and in the concluding para of the said order, it has also been specifically mentioned that on the basis of the material available on the record coupled with the statement of the Investigating Officer corroborating the factum of

the recovery of opium from the possession of the petitioner and his said co-accused, the cognizance is taken against the petitioner so as to put him to the trial after the framing of the charges. Thus, it becomes crystal clear that the Court below has declined to rely upon the said enquiry report qua the innocence of the petitioner and has, rather, taken the cognizance against him on the basis of the material as available on the file after the presentation of the Challan. It is well settled that though the Court is not supposed to call upon the police to submit the charge-sheet against an accused but at the same time, it is under no obligation to accept the police report and is well within its power to disagree with the same and to take cognizance against the accused on the basis of the material available on the record after the presentation of the Challan/Charge-sheet on completion of the investigation.

9. The observations, as made by the Co-ordinate Bench in **Ranbir Singh (supra)**, do not further the cause of the petitioner in the present case because the same have been made while deciding the bail petition and moreover, in Para No.14 therein, it has, rather, been observed that “*when the trial Court was seized of the matter regarding consideration of the charge, it was competent to take cognizance and to summon the petitioner to face the trial and since the application, as moved by the police under Section 169 Cr.P.C., was dismissed and the charges against the co-accused were framed by a composite order, the illegality in not having immediately acted in terms of the said provisions, lost significance*”. In the instant case also, the application as moved by the petitioner has been dismissed while taking the cognizance against him simultaneously vide the impugned

composite order.

10. As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, irregularity, infirmity or perversity so as to call for any interference by this Court and hence, the revision petition in hand, being *sans* any merit, deserves dismissal. Resultantly, the same stands dismissed accordingly.

December 03, 2021.
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether Reportable?	Yes