

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

CRM-M-8610-2022 (O&M)
Date of Decision: 16.05.2022

Didar SinghPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Impinder Singh Dhaliwal, Advocate, for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab, assisted by SI Ranjeet Singh.

Mr. Sant Pal Singh Sidhu, Advocate and Mr. Gurpal Singh Sandhu, Advocate, for the complainant.

GURVINDER SINGH GILL, J.

1. The petitioner has challenged order dated 02.02.2022 (Annexure P-7) passed by the learned Additional Sessions Judge, Faridkot dismissing an application filed by the petitioner for his release on account of the petitioner having been declared innocent in the supplementary charge-sheet filed by prosecution in terms of section 173(8) Cr.P.C. on 10.12.2021 (Annexure P-5) in case FIR No.0124 dated 17.08.2021 at Police Station Sadar Kotkapura, District Faridkot, under Sections 302, 307, 341, 427, 506, 148, 149, 120-B IPC and Sections 25, 27, 54, 59 of the Arms Act (Sections 323 & 324 IPC added later on).
2. The matter pertains to murder of Navjot Singh. The FIR in question was lodged at the instance of Surinder Kaur, mother of deceased, wherein she has stated that that her '*Nanad*' (husband's sister) namely Gurjinder Kaur was married to Balwinder Singh. However, said Gurjinder Kaur expired in the

year 1996 and after her death, Balwinder Singh started residing with Iqbal Kaur as her husband. Later, a dispute arose amongst them (Iqbal Kaur and Balwinder Singh) over money and property as a result of which Balwinder Singh and Iqbal Kaur started residing separately and some litigation was also pending amongst them. It is alleged that Iqbal Kaur with the help of her 'Jija' (sister's husband) namely Anantdeep Singh took possession of Balwinder Singh's house regarding which Balwinder Singh got a case registered at Police Station NRI, Moga. It is alleged that on 17.08.2021, in order to pursue the said case of Balwinder Singh, she (complainant) alongwith Balwinder Singh, her son Navjot Singh @ Navi and one of their relatives Mandeep Singh @ Babbu proceeded from Sri Muktsar Sahib to Moga, in their car bearing registration No.DL-10-CF-0120. While they were on their way, a black coloured 'Scorpio' vehicle, two 'Thar' vehicles, one 'Innova' vehicle and one more vehicle tried to surround their car. Complainant's son, who was driving the car, took the car towards a narrow link road and on account of the narrow road the vehicles following them could not overtake them, but the Scorpio vehicle following their car kept on banging into rear of their car and also started firing upon them with an intention to kill them. However, when they (complainant party) approached the main road, the said vehicles were able to surround their car. It is alleged that Anantdeep Singh @ Roma, who was armed with a rod alongwith 15/20 unidentified persons alighted from the said vehicles carrying hockey sticks, baseball bats, rods, swords etc. Anantdeep Singh pulled out complainant's son Navjot Singh @ Navi from the car and exhorted his companions to teach him a lesson for not giving land to his sister-in-law Iqbal Kaur. Anantdeep Singh gave several blows with the help of rod on legs and arms of the complainant's son. The other persons also inflicted injuries to the

complainant's son with their respective weapons and also fired shots. It is alleged that when complainant's brother-in-law Balwinder Singh and Mandeep Singh tried to rescue Navjot Singh, the accused inflicted injuries to Balwinder Singh and Mandeep Singh as well. Navjot Singh on account of injuries sustained by him fell unconscious. The accused thereafter went away from the spot in their respective vehicles. Navjot Singh was taken to Civil Hospital, Kotkapura from where he was referred to Guru Gobind Singh Medical College, Faridkot, but he succumbed to his injuries. The complainant has alleged that the accused nursed a grudge against the complainant, her son Navjot Singh (deceased) and Mandeep Singh, as they had been pursuing and supporting Balwinder Singh, in the cases pertaining to property, which were pending between Balwinder Singh and Iqbal Kaur. It is alleged that Iqbal Kaur and Sukhi Rajeana had conspired and had connived with Anantdeep Singh and with the help of others, they had murdered her son.

3. As noticed in FIR, while it is alleged that assailants were numbering about 15-20, only three accused are named specifically therein. Petitioner is not named in FIR. The police was able to arrest 7 of the accused and upon finding evidence as regards their involvement, a report u/s 173 Cr.P.C, was filed on 16.11.2021(Annexure P-4), which the prosecution filed hurriedly to avoid grant of bail to arrested accused in terms of Section 167(2) Cr.P.C. since the prescribed period of 90 days for presentation of report u/s 173 Cr.P.C. was expiring. It was however stated in the report that since remaining 9 co-accused were yet to be arrested and relatives of 3 out of the 7 charge-sheeted accused, i.e. relatives of Yadwinder Singh, Sukhvir Singh and Gurmukh Singh had submitted applications regarding their innocence

which were still pending, a report under 173(8) Cr.P.C. would be filed later.

The names of the 7 accused, who were charge-sheeted, are as follows:

1. Anantdeep Singh
 2. Iqbal Kaur
 3. Sukhvir Singh (*application regarding his innocence was pending*)
 4. Arbat Singh
 5. Yadwinder Singh (*application regarding his innocence was pending*)
 6. Gurmukh Singh (*application regarding his innocence was pending*)
 7. **Didar Singh** (PETITIONER)
4. The remaining 9 accused, who could not be arrested, were mentioned in column No.2 of report filed u/s 173 Cr.P.C. (Annexure P-4). The names of said 9 accused are stated herein below:
1. Gagandeep Singh
 2. Gurpreet Singh
 3. Ravinder Singh
 4. Harnek Singh
 5. Budh Singh
 6. Jaspreet Singh
 7. Jagdeep Singh
 8. Harpreet Singh
 9. Manpreet Singh
5. Subsequently, on 02.12.2021, the prosecution submitted a supplementary report under 173(8) Cr.P.C. to the effect that Sukhvir Singh, Yadavinder Singh and Gurmukh Singh whose applications claiming innocence were pending when report u/s 173 Cr.P.C. dated 16.11.2021(Annexure P-4) was filed, had been found to be innocent, upon further investigation.

6. On 10.12.2021, yet another report under 173(8) Cr.P.C. (Annexure P-5) was presented by the prosecution stating therein that Didar Singh had also been found innocent upon further investigation.
7. It was pursuant to filing of aforesaid report dated 10.12.2021(Annexure P-5) filed u/s 173(8) Cr.P.C. by prosecution asserting innocence of petitioner Didar Singh, that the petitioner Didar Singh moved an application dated 24.12.2021 (Annexure P-6), before trial Court, seeking his release. However, the trial Court, declined the said prayer by passing a detailed order dated 2.2.2022 (Annexure P-7), which is being impugned in this petition.
8. The learned counsel representing the petitioner submitted that when the police presented challan against the petitioner on 16.11.2021 (Annexure P-4), an inquiry initiated pursuant to an application moved by the petitioner's father as regards his innocence was still pending. It has been submitted that an extensive inquiry was conducted by the Superintendent of Police, Faridkot and upon conclusion of same, the petitioner was found to be innocent and that consequently, the supplementary challan dated 10.12.2021 (Annexure P-5) was presented by the police, wherein the petitioner was declared innocent.
9. It has been submitted that the petitioner, thereafter, moved an application (Annexure P-6) before the trial Court, seeking his release, but the same was dismissed by trial Court vide impugned order dated 2.2.2022 (Annexure P-7) without appreciating the findings of enquiry report, while erroneously holding therein that there was sufficient material to prove his complicity and that it would be during trial that the question as regards his innocence could be adjudicated. It has also been submitted that in fact when the test identification parade was conducted, complainant Surinder Kaur (mother of

deceased Navjot Singh) did not identify petitioner Didar Singh as an accused.

10. On the other hand, learned State counsel assisted by the learned counsel for the complainant submitted that since the police has collected sufficient evidence to show that petitioner was part and parcel of the conspiracy to kill Navjot Singh and had facilitated his murder by furnishing vital information regarding movement of deceased, which finds support from call details record collected during investigation, no case for his release/discharge is made out. It has further been submitted that since the investigating agency never sought any permission from Court concerned to further investigate the matter after report under 173 Cr.P.C. already stood presented against the petitioner, the supplementary report u/s 173(8) cannot be looked into as such practice of conducting further investigation without permission of Court has repeatedly been deprecated by higher Courts. It has thus been submitted that the learned Additional Sessions Judge, Faridkot was perfectly justified in declining the application as moved by petitioner for his discharge.
11. I have considered rival submissions addressed before this Court.
12. Before proceeding to discuss the factual position in the present case, it is deemed appropriate that the legal issue raised by the learned State counsel as regards propriety of filing supplementary report u/s 173(8) Cr.P.C. (Annexure P-5) asserting innocence of an accused, who in the earlier report u/s 173 Cr.P.C. (Annexure P-4) had been found prima-facie guilty, be discussed. It has been contended on behalf of the State that the aforesaid supplementary report, which is absolutely contrary to the previous report filed under section 173 Cr.P.C., has been filed on the basis of further investigation conducted by police without seeking permission of the Court

and that the police has virtually exceeded its jurisdiction in giving a clean chit to an accused after challan had already been presented against him upon finding his participation in the occurrence.

13. Having regard to the contentions raised above, it would be to apposite to retrace the law propounded by Hon'ble Supreme Court in context of scope of Section 173 Cr.P.C., with particular reference to sub-Section (8). The relevant provisions of section 173 Cr.P.C. read as under:

"173. Report of police officer on completion of investigation.-

- (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(1A) x x x

- (2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170;
- (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code (45 of 1860).

- (ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) x x x

(4) x x x

(5) x x x

(6) x x x

(7) x x x

(8) *Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."*

(emphasis supplied)

14. Hon'ble Supreme Court, while discussing the nature of right conferred on police to further investigate a matter, in Ram Lal Narang v. State (Delhi Administration) 1979 SCC (Criminal) 479, held that while it is a statutory right of police to further investigate even where a Magistrate has already taken cognizance of the case but the Police should ordinarily seek permission of the Court to conduct further investigation. It was however also observed that in the absence of malice, the failure to do so would not render the investigation illegal.

15. Even in State of Andhra Pradesh v. A.S. Peter (2008) (1) SCC (Criminal) 427, Hon'ble Supreme Court had taken a similar view that law does not mandate taking of prior permission from Magistrate for further investigation.

16. Hon'ble the Supreme Court in Rama Chaudhary others v. State of Bihar 2009 (2) RCR (Criminal) 570, held that after submission of charge sheet in terms of section 173(2) Cr.P.C., the police has a right to further investigate the matter under Section 173(8) Cr.P.C. without prior permission of the

further investigation is permissible, reinvestigation is not. It was held that the law does not mandate taking prior permission from the Magistrate for conducting further investigation and that carrying out further investigation i.e. after initial presentation of charge sheet is a statutory right of police.

17. In Vinay Tyagi vs. Irshad Ali 2013(2) RCR(Criminal) 197, the Supreme Court after referring to a plethora of judgements, culled out the broad principles in the matter of further investigation as follows:

“30. Having analysed the provisions of the Code and the various judgments as afore-indicated, we would state the following conclusions in regard to the powers of a magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code :

1. The Magistrate has no power to direct 'reinvestigation' or 'fresh investigation' (de novo) in the case initiated on the basis of a police report.
2. A Magistrate has the power to direct 'further investigation' after filing of a police report in terms of Section 173(2) of the Code.
3. The view expressed in (2) above is in conformity with the principle of law stated in Bhagwant Singh's case (supra) by a three Judge Bench and thus in conformity with the doctrine of precedence.
4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).
5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the Court to the extent that even where the facts of the case and

the ends of justice demand, the Court can still not direct the investigating agency to conduct further investigation which it could do on its own.

6. It has been a procedure of propriety that the police has to seek permission of the Court to continue 'further investigation' and file supplementary charge-sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case."

(emphasis supplied)

18. While specifically dealing with the question of prior permission of Court in Vinay Tyagi's case, (supra) it was held as under:

“49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct "further investigation" or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct "further investigation" and file "supplementary report" with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct "further investigation" and/or to file a "supplementary report" will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of *contemporanea expositio* will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.”

(Emphasis supplied)

19. While the judgements referred to above do not leave any doubt that the police can further investigate the matter even without permission of the Court but it has also been expressed therein that it has been and is a matter of propriety that prior permission should be sought by the police for conducting further

investigation once a report under section 173 Cr.P.C. has already been presented in the Court. Such caution or propriety is demanded in the interest of fair play particularly where the further investigation is sought to be made so as to reach at a conclusion conflicting with the earlier report as in the present case. A conflicting report does not reflect well upon the investigating agency inasmuch as the same rather reflects that the matter had not been investigated properly in the first instance and entire evidence had not been collected, though of course, in exceptional cases the investigating agency may satisfy Court that despite due diligence and despite following the standard protocol of investigation, such evidence did not surface earlier. The Courts have come across cases where the investigating agency comes up with a supplementary report under Section 173(8) Cr.P.C. with a conflicting conclusion solely on the basis of some oral evidence collected subsequently without there being any justifying reason as to why the statement of such witnesses were not recorded earlier. In such cases the conduct of the investigating agency is rather rendered suspect.

20. In the present case though the investigating agency had not taken any prior permission of the Court before conducting further investigation but keeping in view that there is no such bar in the Code and also that the trial Court concerned cannot be said to have taken cognizance when report u/s 173(8) Cr.P.C. was presented on 10.12.2021 (Annexure P-5) inasmuch as the case had just been committed to the Court of Sessions, the supplementary report cannot be called to question on the count that the police had not taken prior permission of the Court before conducting further investigation. The contention raised in this regard cannot be accepted.

21. Coming to the facts of the case, it is not in dispute that the petitioner is not specifically named in the FIR, but came to be nominated as an accused during the course of investigation, vide DDR No.40 dated 25.08.2021. As such the investigation conducted by the police needs to be referred to. A brief gist of investigation, as it had progressed after lodging of FIR, is stated below:

- (i) blood-stained soil was collected from the place of occurrence. However the report of FSL is awaited;
- (ii) the damaged car in which the deceased was travelling was taken into possession. Broken pieces of window pane glass were recovered from the place of occurrence;
- (iii) medical evidence in the shape of post-mortem report of deceased Navjot Singh and also MLR in respect of injured Mandeep Singh who was found to have sustained 1 injury with the help of a sharp edged weapon and another with a blunt edged weapon;
- (iv) supplementary statement dated 20th of August 2021 of eyewitness Baljinder Singh wherein he disclosed names of accused while stating that white coloured '*Innova*' car bearing registration No. PB-04-AD-0303 was being driven by Arbat Singh while Yadvinder Singh was sitting on the front passenger seat and Gagandeep Singh on the rear seat who were carrying rods. He further stated that in black coloured '*Scorpio*' vehicle bearing registration No.PB-39-G-3500 Gurpreet along with 2 unknown persons was sitting and while one of them was armed with a revolver the other was having a gun. He stated that in the white coloured '*Swift- Desire*' car bearing registration No.PB-76A-8331, 2 persons were sitting. He stated that Anantdeep along with another person who was wearing a cap was sitting in a new model '*Thar*' vehicle. He further stated that that there was another grey coloured old model '*Thar*' vehicle in which 2 persons were sitting. It was on the basis of the said supplementary statement that four accused namely Arbat Singh, Yadavinder Singh, Gagandeep Singh and Gurpreet Singh came to be nominated vide DDR No.51 dated 20th of August 2021;

- (v) Arbat Singh and Yadvinder Singh came to be arrested on 20th of August 2021 while they were travelling in 'Innova' vehicle bearing registration No.PB-04-AD-0303. Pursuant to a disclosure statement made by Arbat Singh about having inflicted injuries with iron rod to deceased Navjot Singh and injured Mandeep Singh, he got the said iron rod recovered on 22.08.2021. He also disclosed having fired in air with his licensed revolver and got the same recovered alongwith 7 cartridges apart from a double barrel 12 bore gun;
- (vi) Yadavindra Singh also made a disclosure statement to the effect that he had given his 12 bore licensed gun to his friend Anantdeep about a week before the occurrence and had brought the same back from Ravinder Singh one day after the occurrence. Pursuant to his disclosure statement he got the said double barrelled licensed gun recovered apart from a belt containing 20 live cartridges;
- (vii) Sukhvir Singh was arrested on 24.8.2021. He is specifically named in FIR stated to be helping Iqbal Kaur and not allowing Balwinder Singh to enter the land;
- (viii) pursuant to another supplementary statement dated 25.8.2021 made by eyewitness Balwinder Singh and on the basis of some other evidence collected by the police, another nine accused namely Ravinder Singh, Harnek Singh, Didar Singh, Budh Singh, Jaspreet Singh, Jagdeep Singh, Gurmukh Singh, Harpreet Singh and Manpreet Singh were nominated as accused vide DDR No.40 dated 25.08.2021;
- (ix) Gurmukh Singh was produced before police on 25.8.2021 by Kulwant Singh Panch, village Dhilwan Kalan. Upon interrogation he disclosed that he along with Harpreet Singh and Manpreet Singh and his friend had conducted *recce* while sitting in a Zen car bearing registration No.PB-11T-0085. Pursuant to his disclosure statement, he got the said Zen car recovered from the house of his brother-in-law of Harpreet Singh;
- (x) CCTV footage pertaining to 17.8.2021 from 8 AM to 10.30 AM collected from Green Dhaba, Kotkapura showing Anantdeep alongwith other persons stated to be gangsters;

- (xi) Anantdeep and Iqbal Kaur were arrested by the police on 17.09.2021 while they were travelling in a car without any registration number. On 19.9.2021, pursuant to a disclosure statement made by Anantdeep, he got recovered a hockey stick stated to be used by him for inflicting injuries;
- (xii) Didar Singh was produced before the police by Ex-Sarpanch Shivraj Singh on 4.10.2021, who disclosed that he alongwith his friend Yadavinder Singh and Gagandeep Singh had furnished information regarding arrival of Navjot Singh in his car bearing registration No.DL-10-CF-0120 to the main accused Anantdeep who, in connivance with other accused, killed Navjot Singh;
- (xiii) the investigating agency also got Test Identification Parade conducted in respect of accused Arbat Singh, Yadavinder Singh, Didar Singh and Gurmukh Singh through complainant Surinder Kaur in the Court of JMFC Faridkot. Didar Singh is not stated to have been identified by complainant Surinder Kaur;
- (xiv) during investigation call details record in respect of mobile phones of accused was also collected indicating presence of Anantdeep Singh, Harnaik Singh, Gurpreet Singh, Jagdeep Singh, Ravinder Singh, Harpreet Singh, Budh Singh and Manpreet Singh at village Warra Darraka. Further as per the said Call Details Record, the location of accused Gagandeep Singh, Didar Singh and Yadvinder Singh who had conducted *recce* is shown at Muktsar Sahib;
- (xv) as far as the use of the weapons recovered from the accused is concerned, the report of FSL is still awaited.

22. Interestingly, in the supplementary report under 173(8) Cr.P.C., dated 10.12.2021 (Annexure P-5), wherein the police claims innocence of Didar Singh, there is a reference to an application bearing No.507 PC-8/21, submitted by his father Makhan Singh on 14.10.2021 asserting innocence of Didar Singh whereas in the initial challan filed on 16.11.2021 there is no reference to filing of any such application by father of Didar Singh while there is a specific reference of filing similar applications by three other

accused namely Yadvinder Singh, Gurmukh Singh and Sukhvir Singh. Rather from perusal of serial numbers of the applications submitted by these three accused i.e. application no.506 PC-8/21, application no.533 PC-8/21 and application No.589 PC-8/21, it really remains unexplained as to why application bearing No.507 is not referred to in the initial challan whereas other three are specifically referred to.

23. Still further the reasons assigned for declaring Didar Singh innocent do not sound convincing. The version put forward on behalf of Didar Singh is that he had fallen from his motorcycle when a dog came in front of his motorcycle in the month of August 2021 leading to multiple injuries on account of which he used to remain confined to house except for visits to Muktsar Sahib for getting his bandage done. It is stated that on 17.08.2021 Didar Singh had gone to Muktsar Sahib along with Gurmukh Singh and Yadvinder Singh to get his medicines. However, since in the meantime, some of his relatives had come to enquire about his well-being, his father sent Gursewak Singh to bring his son (Didar Singh) back home and that Didar Singh, after returning home did not leave his house. The enquiry officer while accepting the aforesaid version has assigned the following reasons which somehow do not sound very convincing so as to give a clean chit to him contrary to earlier findings in report filed initially u/s 173 Cr.P.C. (Annexure P-4). The said reasons are stated and are being evaluated hereinunder:

- (i) *that since there is no mention of Didar Singh in FIR or even in the statement of Balwinder Singh recorded after 3 days of occurrence, his involvement is rendered doubtful;*

The aforesaid reasoning is rather difficult to accept as the evidence collected against Didar Singh is more in the nature of having conspired and having facilitated the commission of crime and not particularly having participated at the time of occurrence. There is evidence to show that Didar Singh was present along with Yadvinder Singh and Gagandeep Singh on the day of occurrence doing *recce* and had furnished information about the movement of the car of deceased to the main accused Anantdeep who, in connivance with other accused, killed Navjot Singh (deceased). Apart from the disclosure statement made by Didar Singh to this effect, the Call Details Record confirms the presence of the petitioner along with co-accused Yadvinder and Gagandeep on the day of occurrence at Muktsar Sahib.

The plea of alibi as accepted by the enquiry officer is not based on concrete evidence whereas an alibi is required to be proved by cogent and convincing evidence so as to absolutely rule out possibility of presence of such accused at the nominated place leaving no doubt about his absence. Merely leading oral evidence to discount presence is not sufficient to establish plea of alibi.

Still further, the ex-Sarpanch Shivraj Singh is also a material witness against petitioner as he had produced the petitioner before the police and would disclose the circumstances under which the petitioner approached him for his surrender to police.

- (ii) *that since Didar Singh had not been identified by complainant Surinder Kaur during Test Identification Parade, the same proves his innocence;*

It needs to be borne in mind that the allegations against the petitioner mainly pertain to the petitioner being a part of the conspiracy inasmuch

as he had conducted *recce* and furnished information regarding movement of the deceased to co-accused so as to facilitate the commission of crime. In these circumstances, the fact that the complainant did not identify Didar Singh will not help the petitioner in any manner as Didar Singh may not have proceeded to the place of occurrence after furnishing information to the co-accused.

(iii) *that since no stick or any other weapon had been recovered from Didar Singh, therefore he cannot be connected to the crime in question;*

As already stated above, the role of Didar Singh being mainly of a conspirator, having furnished information to co-accused regarding movement of the deceased to facilitate commission of crime by co-accused, he was not required to possess any weapon for conducting *recce*. As such, absence of recovery of any weapon from Didar Singh is inconsequential.

(iv) *that as per father of petitioner, on the day of occurrence the petitioner along with Gurmukh Singh and Yadwinder Singh had left for Muktsar from his village Samagh to get his bandage done on his previously sustained injuries and since said Gurmukh Singh has already been found innocent therefore the version put forth by petitioner's father regarding innocence of petitioner deserves to be accepted;*

As already discussed above, the Call Details Record establishes the case of the prosecution that as on the day of occurrence, Didar Singh was accompanied by Yadvinder Singh and Gagandeep Singh which is in tune with disclosure statement made by petitioner that he alongwith Yadvinder Singh and Gagandeep Singh had passed on information regarding movement of deceased to co-accused Anantdeep Singh. Still further, the inquiry officer has not stated a word as regards ex-Sarpanch

Shivraj Singh who had produced the petitioner before the police for his surrender. As such Didar Singh cannot get any benefit in case Inquiry Officer has now declared Gurmukh Singh to be innocent which, in any case, has not been affirmed by the Court.

24. The reasons as assigned by the Inquiry Officer for holding Didar Singh innocent cannot be accepted, at this preliminary stage. The evidence collected by the police as has been noticed in the earlier part of the judgement is sufficient to *prima-facie* conclude that the accused had also participated in the commission of crime though in a passive manner by way of furnishing material information to the co-accused as regards movement of the deceased which facilitated the co-accused to give effect to their designs. In other words, the petitioner had conspired with the co-accused for the commission of the offence in question. The Court, at this stage, is not to embark upon a mini trial but is required only to broadly assess the relevance of evidence collected by the prosecution and the quality of such evidence so as to weigh the same against the version of the accused as may be put forth or any such evidence as may have been collected by the investigating agency while considering such version. The evidence collected in the present case by prosecution is sufficient to *prima-facie* conclude that petitioner had conspired with remaining co-accused so as to proceed against the petitioner. There is no infirmity in the impugned order and the same is upheld. The petition is sans merit and is hereby dismissed.
25. Needless to mention, it shall be always open to the petitioner to lead evidence in his defence at appropriate stage so as to demolish the case of prosecution and to establish his innocence. It is also clarified that dismissal

of the instant petition shall not be taken into account by trial Court while finally deciding the case.

16.05.2022

Vimal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes